13447

(16,938.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 353.

THE STATE OF OHIO, APPELLANT,

vs.

J. B. THOMAS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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1 TRANSCRIPT OF RECORD.

Transcript.

THE UNITED STATES OF AMERICA, }
Southern District of Ohio, Western Division, } ss:

At a stated term of the circuit court of the United States of America, within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms at the city of Cincinnati, Ohio, in said district, on the first Tuesday of April, being also the sixth day of that month, in the year of our Lord one thousand eight hundred and ninety-seven and of the American Independence the one hundred and twenty-first—present, the Honorable Wm. H. Taft, circuit judge—among the proceedings had were the following, to wit:

No. 5042. In the Matter of J. B. THOMAS, *Ex Parte.*

Be it remembered that heretofore, to wit, on the 15th day of April, in the year of our Lord one thousand eight hundred and ninety-seven, came the petitioner herein, by his attorneys, and filed his certain petition in the clerk's office of the court aforesaid, which said petition is clothed in the words and figures following, to wit:

Petition for Writ of Habeas Corpus.

To the honorable the circuit court of the United States in and for the southern district of Ohio, western division:

Your petitioner, J. B. Thomas, respectfully represents and shows to this honorable court that he was on March 2, 1897, and has since continued to be governor of the Central branch of the National Home for Disabled Volunteer Soldiers, which is located in Montgomery county, Ohio, on certain grounds purchased, held,
2 and used by the United States for the purposes set forth in an act entitled "An act incorporating a national military and naval asylum for the relief of the totally disabled officers and men of the volunteer forces of the United States," approved March 3, 1865, and the act amendatory thereof approved March 21, 1866, and other acts amendatory and supplementary thereto; that he is unjustly and unlawfully detained and deprived of his liberty at the city of Dayton, in the county aforesaid, by one L. J. Shafer, a constable of said county, by virtue of a certain warrant of commitment issued by one J. R. Thompson, a justice of the peace within and for said county, a copy of which commitment is hereto attached, marked Exhibit A; that said warrant of commitment was issued by said justice upon an affidavit charging that petitioner as governor aforesaid did, on March 2, 1897, unlawfully serve and furnish to the inmates of said National Military Home for Disabled

Volunteer Soldiers, as food to be then and there eaten by said inmates, certain oleomargerine, in violation of the statutes of the State of Ohio; that petitioner being brought before said justice of the peace refused to plead to said charge and moved to dismiss the same on the ground that the actions upon which said proceeding was founded were done by him in the discharge of his duty as governor of said national home under the authority of the board of managers in charge of said institution by virtue of the acts of Congress aforesaid, and by authority of said acts, that they were entirely done and performed on the grounds acquired, used, and controlled by the United States for the purpose of said home and with respect to the inmates thereof, only, in their maintenance and support by the United States, and not otherwise, said actions having consisted merely in distributing to them supplies procured for such use by authority of Congress and said board of managers; that the facts averred above as the ground of said motion are true; that notwithstanding the premises said justice of the peace proceeded to try petitioner on said charge, found and adjudged him guilty of the offense aforesaid, and adjudged that he pay a fine of fifty dollars and stand committed until the same should be paid, and thereupon issued the warrant of commitment aforesaid.

Your petitioner avers that said justice of the peace had no jurisdiction over the lands and territory whereon said acts were done nor your petitioner by reason of said actions, and that said proceedings and warrant of commitment are wholly void.

3 Wherefore, for relief of said unlawful detention, your petitioner prays that a writ of *habeas corpus*, to be directed to said L. J. Shafer, constable as aforesaid, may issue in this behalf so that your petitioner may be forthwith brought before this court to do, submit to, and receive what the law may direct.

J. B. THOMAS,
By J. W. BOWMON AND
JUDSON HARMAN, *Attorneys.*

STATE OF OHIO, } ss:
Montgomery County, }

J. B. Thomas, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition signed by his attorney, that he has read the same and knows the contents thereof, and that the statements are true as he verily believes.

J. B. THOMAS, *Petitioner.*

Sworn to and subscribed by the said J. B. Thomas before me this 15th day of April, A. D. 1897.

W. S. McCONNAUGHEY,
[SEAL.] *Notary Public, Montgomery County, Ohio.*

STATE OF OHIO, } ss:
County of Montgomery, }

I, C. M. Hassler, clerk of the common pleas court in and for said county, which is a court of record, having a seal, do hereby certify

that W. S. McConnaughey whose name is subscribed to the certificate or proof of acknowledge- of the annexed instrument, and therein written was at the time of so taking such proof or acknowledgment a notary public in and for said county, duly commissioned and qualified and duly authorized to take the same, and take and certify the proof and acknowledgment of deeds by the laws of this State; and, further, that I am acquainted with his handwriting, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the laws of the State of Ohio.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court in the city of Dayton, this 15th day of April, 1897.

C. M. HASSLER, *Clerk*,
[SEAL.] By P. H. OCHILTREE, *Deputy*.

4 EX. "A."

Commitment to Workhouse

THE STATE OF OHIO, } ss:
Montgomery County, Dayton Township, }

To the superintendent of the workhouse of the city of Dayton, Montgomery county, Greeting:

Whereas, J. B. Thomas has been arrested on the oath of Joseph E. Blackburn for this; that on the 2d day of March, 1897, in the county of Montgomery, State of Ohio, the said J. B. Thomas was then and there in charge of the eating-house at Central branch of the National Home for Disabled Volunteer Soldiers, in the county of Montgomery, State of Ohio, and that the said J. B. Thomas then and there in said eating-house did unlawfully serve and furnish to the inmates of the said Central branch of the National Home for Disabled Volunteer Soldiers as food to be then and there eaten by said inmates certain oleomargerine and the said J. B. Thomas did not then and there display and keep a white placard in a conspicuous place in the dining-room of said eating-house where said oleomargerine was then and there served and furnished as aforesaid with the words "Oleomargerine sold and used here" printed in black letters upon said placard where same could be easily seen and read, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio, in said county; and the said J. B. Thomas having been afterwards brought before me J. R. Thomson a justice of the peace in said county, to answer to said charge, and having pleaded "not guilty" thereto, and having in a writing subscribed by him before me and duly filed, waived . jury trial and submitted to be tried by me; and having been sentenced by me to pay a fine of fifty dollars, and also fifteen dollars, the costs therein taxed; and to be imprisoned and kept at hard labor in the workhouse at Dayton, in the county

of Montgomery, until such fines and costs be paid, or secured to be paid, or until he be otherwise discharged according to law.

And whereas, the said J. B. Thomas has neglected and refused to pay said fines and costs.

Therefore, in the name of the State of Ohio, I command you to receive the said J. B. Thomas into your custody, to be imprisoned in the workhouse in the city aforesaid, there to remain and be kept at hard labor until he pay said fine and costs, or secure the same to be paid, or he be otherwise discharged according to law.

5 Given under my hand this 14th day of April, A. D. 1897.

J. R. THOMSON,
Justice of the Peace, Dayton Tp., Montg. Co., Ohio.

Endorsed on back:

Sentence; fines $50.00. I certify that the within is a true copy of the original writ. L. J. Shafer, constable.

And afterwards, to wit, on the 15th day of April, an entry was made upon the journal of said court, clothed in the words and figures, following, to wit:

Entry.

Journal 4, page 70.

Upon application of the plaintiff, herein, it is ordered that a writ of *habeas corpus* issue returnable April 26, 1897.

And afterwards, to wit, on the 15th day of April, A. D. 1897, there was issued out of the clerk's office of the court aforesaid, our certain writ of *habeas corpus*, which said writ of *habeas corpus* is clothed in the words and figures, following, to wit:

Habeas Corpus.

UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio, } ss:

To L. J. Shafer, constable of Montgomery county, Ohio:

We command you, that the body of J. B. Thomas in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before the Hon. William H. Taft, judge of our circuit court of the United States, within and for the division and district aforesaid, on the 26th day of April, A. D. 1897, at the U. S. court-rooms in the Government building, in the city of Cincinnati, Ohio, to do and receive all and singular those things which the said Hon. William H. Taft, judge of our said circuit court, shall then and there consider of him in this behalf; and have you then and there this writ.

6 Witness, the Honorable Melville W. Fuller, Chief Justice of the United States of America, this fifteenth day of April, A. D. 1897.

Attest:
[SEAL.]

B. R. COWEN, *Clerk,*
By ROB'T C. GEORGI, *Deputy.*

And afterwards, to wit, on the 15th day of April, A. D. 1897, the following recognizance was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Recognizance.

THE UNITED STATES OF AMERICA, }
Southern District of Ohio, } ss:

Be it remembered, that on this 15th day of April, A. D. 1897, before me, B. R. Cowen, clerk of the United States circuit court, within and for the district aforesaid, duly appointed as such by the said court, personally came J. B. Thomas, as principal, and Judson Harmon, as sureties, and jointly and severally acknowledged themselves to owe the United States of America in the sum of five hundred dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to wit:

The condition of this recognizance is such, that if the said J. B. Thomas shall personally appear before the circuit court of the United States, in and for the district aforesaid, at Cincinnati, Ohio, on 26th April, A. D. 1897, and then and there abide the further order of said court, and not depart without leave thereof, then this recognizance to be void, otherwise to remain in full force and virtue.

JUDSON HARMON. [SEAL.]

Taken and acknowledged before me on the day and year first above written.

ROB'T C. GEORGI,
Dep. Clerk U. S. Circuit Court, Southern District of Ohio.

And afterwards, to wit, on the 23rd day of April, A. D. 1897, came the marshal of the district, and returned the aforesaid
7 writ of *habeas corpus* into the clerk's office of said court, clothed in the words and figures following, to wit:

Marshal's Return.

UNITED STATES OF AMERICA, }
Southern District of Ohio. }

Received this writ at Cincinnati, Ohio, on the 15th day of April, 1897, and on the 19th day of April, 1897, I served the same by handing a true copy hereof, with all the endorsements thereon, to L. J. Shafer, constable of Montgomery county, at Dayton, Ohio.

MICHAEL DEVANNEY,
U. S. Marshal, S. D. O.,
By JOHN G. HEHER, *Deputy.*

59 mi. writ.....	$3 54
1 service...	2.00
	$5 54

And afterwards, to wit, on the 23rd day of April, A. D. 1897, a certified copy of the original writ of *habeas corpus* was filed in the clerk's office of the court aforesaid, with the following return endorsed thereon, clothed in the words and figures following, to wit:

Return.

APRIL 26TH, 1897.

Received the within writ Apr. 19, 1897, and now, as ordered, am in court with the body of J. B. Thomas, and hold him under and by virtue of the attached commitment issued by B. R. Thomson, J. P., Dayton tp. Montgomery Co., Ohio.

L. J. SHAFER, *Constable.*

The following mittimus is hereto attached:

Commitment to Workhouse.

THE STATE OF OHIO, } ss:
Montgomery County, Dayton Township, }

To the superintendent of the workhouse of the city of Dayton, Montgomery county, Greeting:

Whereas, J. B. Thomas has been arrested on an oath
8 of Joseph E. Blackburn, for this, that on the 2nd day of March, 1897, in the county of Montgomery, State of Ohio, the said J. B. Thomas was then and there in charge of the eating-house at Central branch of the National Home for Disabled Volunteer Soldiers, in the county of Montgomery, State of Ohio, and that the said J. B. Thomas then and there in said eating-house did unlawfully serve and furnish to the inmates of the said Central branch of the National Home for Disabled Volunteer Soldiers as food to be then and there eaten by said inmates, certain oleomargerine; and the said J. B. Thomas did not then and there display and keep a white placard in a conspicuous place in the dining-room of said eating-house, where said oleomargerine was then and there served and furnished, as aforesaid, with the words "Oleomargerine sold and used here," printed in black letters upon said placard, where same could be easily seen and read, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio, in said county; and the said J. B. Thomas having been afterwards brought before me, J. R. Thomson, a justice of the peace, in said county, to answer to said charge, and having pleaded "not guilty" thereto, and having, in a writing subscribed by him before me and duly filed, waived a jury trial and submitted to be tried by me; and having been sentenced by me to pay a fine of fifty dollars, and also fifteen dollars, the costs therein taxed, and to be imprisoned and kept at hard labor in the workhouse at Dayton, in the county of Montgomery, until such fines and costs be paid, or secured to be paid, or until he be otherwise discharged according to law.

And whereas, the said J. B. Thomas has neglected and refused to pay said fines and costs.

Therefore, in the name of the State of Ohio, I command you to receive the said J. B. Thomas into your custody, to be imprisoned in the workhouse of the city aforesaid, there to remain and be kept at hard labor until he pay said fine and costs, or secure the same to be paid, or he be otherwise discharged according to law.

Given under my hand, this 14th day of April, A. D. 1897.

J. R. THOMSON,
Justice of the Peace, Dayton Tp., Montg. Co., Ohio.

Endorsed on back: Sentence; fines $50.00.

9 And afterwards, to wit, on the 26th day of April, A. D 1897, the following transcript was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Transcript.

STATE OF OHIO, } ss:
Montgomery County, }

Case No. 1, docket 2. Before J. R. Thomson, J. P., Dayton tp.
C. H. BOSLER, *Att'y.*
PATTERSON & MURPHY, *Att'y-.*

THE STATE OF OHIO }
vs.
J. B. THOMAS. }

April 8th, 1897, affidavit files as follows:

Before me, J. R. Thomson, a justice of the peace within and for said county of Montgomery, State of Ohio, personally appeared Joseph E. Blackburn, who first being sworn deposes and says: That on the second day of March, 1897, in the county of Montgomery, State of Ohio, the said J. B. Thomas was then and there in charge of the eating-house at the Central branch of the National Home for Disabled Volunteer Soldiers, in the county of Montgomery, State of Ohio, and that the said J. B. Thomas then and there in said eating-house did unlawfully serve and furnish to the inmates of said Central branch of the National Home for Disabled Volunteer Soldiers, as food to be then and there eaten by said inmates, certain oleomargerine; and the said J. B. Thomas did not then and there display and keep a white placard in a conspicuous place in the dining-room of said eating-house where said oleomargerine was then and there served and furnished as aforesaid, with the words "Oleomargerine sold and used here" printed in black letters upon said placard, where same could be easily seen and read, contrary to the form of the statute in such cause made and provided *at* against the peace and dignity of the State of Ohio.

"JOSEPH E. BLACKBURN."

10 Sworn to before me and subscribed in my presence by the said Joseph E. Blackburn this 8th day of April, 1897.

"J. R. THOMSON," *J. P.*

April 18, 1897, issued a warrant for the arrest of said J. B. Thomas to S. M. Kehoe, constable, who made return as follows: April 14, 1897, I have the body of the within-named J. B. Thomas now in court.

"S. M. KEHOE, *Constable.*"

April 14, 1897, defendant filed motion as follows:

J. B. Thomas, the above-named defendant, declines to plead to the charge made against him herein and moves to dismiss the same for want of jurisdiction because the acts done by him, referred to in the affidavit filed herein, were done solely as governor of the Central branch of the National Home for Disabled Volunteer Soldiers under and by virtue of the laws of the United States and by authority of the board of managers of said national home on the grounds belonging to the United States and used and occupied for the purposes of said home and with respect to inmates of said home only.

Motion overruled by the court; to which the defendant excepts.

April 14, 1897, defendant filed an approved entry, as follows:

This cause coming on for hearing before this court on the 14th day of April, 1897, on motion of J. B. Thomas, the above-named defendant to dismiss him herein for want of jurisdiction of this court. On consideration whereof the court overruled said motion, to which action and overruling of said motion, defendant excepts.

April 14, 1897, defendant filed waiver as follows:

I, J. B. Thomas, defendant in *and* above-entitled case having refused and still refuse to recognize the jurisdiction of this court over me in this action, and my motion to be dismissed herein having been overruled, I hereby waive the right of trial by jury and agree to the trial of this case to the court.

"J. B. THOMAS."

April 14, 1897, counsel for State and for defendant filed agreed statement of facts as follows: The following facts are agreed upon to support the issues in the above-entitled cause:

It is agreed on behalf of the State of Ohio, C. H. Bosler, its att'y in this action being present and consenting thereto, and the
11 defendant J. B. Thomas, being present and with counsel also agreeing thereto.

1. That on the 2d day of March, 1897, J. B. Thomas was and now is the duly chosen and acting governor of the Central branch of the National Home for Disabled Volunteer Soldiers, located in the county of Montgomery, State of Ohio, and as said governor was in charge of the eating-house at the said Central branch of the National Home for Disabled Volunteer Soldiers.

2d. That on the 2d day of March, 1897, Joseph E. Blackburn was *now* and — is the food and dairy commissioner of the State of Ohio.

3d. Said eating-house is used by said J. B. Thomas for serving and furnishing to the inmates of said Central branch of the National Home for Disabled Volunteer Soldiers their daily food and rations,

and is the only place so provided at said national home, and is known as the mess-room of the said Central branch of the National Home for Disabled Volunteer Soldiers, situate on the grounds purchased, held and used by the United States therefor, and the acts complained of herein, consisted in causing oleomargerine to be served and furnished on the 2d day of March, 1897, as food and as part of the rations furnished to the inmates thereof, under the appropriations made by the Congress of the United States for the support of said inmates; and that no placard in size not less than ten (10) x fourteen (14) inches, having printed thereon in black letters not less in size than one and one-half (1½) inches square the words "Oleomargerine sold and used here," was displayed in said eating-house.

4th. The affidavit in the cause is made in conformity with an act of the General Assembly of the State of Ohio, (Ohio Laws, vol. 92, page 23) entitled "An act to amend section 3 of an act entitled 'An act to prevent fraud and deception in the manufacture and sale of oleomargerine and promote public health in the State of Ohio,'" passed May 16, 1894.

SECTION 1. Be it enacted by the General Assembly of the State of Ohio; that section 3 of an act entitled "An act to prevent fraud and deception in the manufacture and sale of oleomargerine and promote public health in the State of Ohio," be amended to read as follows: Sec. 3. Every proprietor, keeper, manager or person in charge of any hotel, boat, railroad car, boarding-house, restaurant, eating-house, lunch counter, or lunch-room, who therein sells, uses, serves, furnishes or disposes of or uses in cooking, any oleomargerine, shall display and keep a white placard in a conspicuous place, where the same may be easily seen and
12 read, in the dining-room, eating-room, restaurant, lunch-room or place where such substance is furnished, served, sold or disposed of, which placard shall be in size not less than 10 x 14 inches, upon which shall be printed in black letter-, not less in size than 1½ inches square, the words "Oleomargerine sold and used here," and said card shall not contain any other words than the ones above described, and such proprietor, keeper, manager or person in charge shall not sell, serve or dispose of such substance as for butter when butter is asked for or purported to be furnished or served.

SEC. 2. Section 3 of the above-recited act, passed May 16, 1894, is hereby repealed and this act shall take effect and be in force from and after its passage.

April 14, 1897, judgment rendered as follows: This cause coming on for hearing before me, J. R. Thomson, J. P. in and for Montgomery county, Ohio, on the agreed statement of facts as furnished by plaintiff and defendant herein. On consideration whereof I do find that defendant, J. B. Thomas, — guilty in manner and form as he stands charged in the affidavit, and do fine him the sum of $50 and costs of this prosecution and order that he stand committed

and held a prisoner until fine and costs are paid. To all of which judgment and fine defendant excepts.

"J. P. THOMSON," *J. P.*

April 14, 1897, defendant filed bill of exceptions which were allowed by the court and made a part hereof.

April 14, 1897, a commitment (mittimus) to the workhouse of Montgomery county together with the transcript of the above proceedings were handed to L. J. Shafer, constable of Dayton township.

STATE OF OHIO, } *ss:*
Montgomery County, Dayton Tp., }

I do hereby certify that the above is a full and true copy of the proceeding had by and before me at my office in said tp. in the above action.

J. R. THOMSON,
Justice of the Peace.

And afterwards, to wit, on the 26th day of April, A. D. 1897, the following bill of exceptions was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

13 *Bill of Exceptions.*

Before J. R. Thomson, Esq., Justice of the Peace, Dayton Township, Montgomery County, Ohio.

THE STATE OF OHIO, Plaintiff, }
vs. } Bill of Exceptions.
J. B. THOMAS, Defendant. }

Be it remembered that upon the trial of the above-entitled case, before J. R. Thomson, justice of the peace, April 14th, 1897, the defendant filed the following motion:

Before J. R. Thomson, Justice of the Peace, Montgomery County, Ohio.

THE STATE OF OHIO }
vs. } Motion.
J. B. THOMAS. }

J. B. Thomas, the above-named defendant, declines to plead to the charge made against him herein, and moves to dismiss the same for want of jurisdiction because the acts done by him referred to in the affidavit filed herein (were done solely as governor of the Central branch of the National Home for Disabled Volunteer Soldiers under and by virtue of the laws of the United States and by authority of the board of managers of said national home, on the grounds belonging to the United States and used and occupied for the purposes of said home and with respect to inmates of said home only.)

Thereupon, the court coming on to hear this case on said motion,

upon consideration thereof, overruled the same, to which action of said court in overruling said motion the defendant excepted.

Thereupon, defendant still refusing to recognize the jurisdiction of this court, filed his waiver of right to trial by jury and agreed to submit this case to the court.

Thereupon the case came on for hearing upon an agreed statement of facts as follows, to wit:

Before J. R. Thomson, Justice of the Peace, Dayton Township, Montgomery county, Ohio.

THE STATE OF OHIO, Plaintiff,
vs.
J. B. THOMAS, Defendant.
} Agreed Statement of Facts.

The following facts are agreed upon to support the issues in the above-entitled cause:

It is agreed on behalf of the State of Ohio, Charles H. Bosler, its attorney in this action, being present and consenting thereto, and the defendant, J. B. Thomas, being present, and with counsel also agreeing thereto:

1. That on the 2nd day of March, 1897, Joseph E. Blackburn was and now is the food and dairy commissioner of the State of Ohio.

2. That on the 2nd day of March, 1897, J. B. Thomas was and now is the duly chosen and acting governor of the Central branch of the National Home for Disabled Volunteer Soldiers, located in the county of Montgomery, State of Ohio, and as said governor was in charge of the eating-house at the said Central branch of the National Home for Disabled Volunteer Soldiers.

3. Said eating-house is used by said J. B. Thomas for serving and furnishing to the inmates of said Central branch of the National Home for Disabled Volunteer Soldiers their daily food or rations, and is the only place so provided at said national home, and is known as the mess-room of the said Central branch of the National Home for Disabled Volunteer Soldiers, situate on the grounds purchased, held and used by the United States therefor, and the acts complained of herein consisted in causing oleomargerine to be served and furnished, on the 2nd day of March, 1897, as food and as part of the rations furnished to the inmates thereof, under appropriations made by the Congress of the United States for the support of said inmates; and that no placard in size not less than 10 x 14 inches, having printed thereon in black letters not less in size than 1½ inches square, the words "Oleomargerine sold and used here," was displayed in said eating-house.

4. The affidavit in the cause is made in conformity with an act of the General Assembly of the State of Ohio (Ohio Laws, vol. 92 page 23), entitled "An act to amend section 3 of an act entitled 'A act to prevent fraud and deception in the manufacture and
15 sale of oleomargerine and promote public health in the State of Ohio,'" passed May 16, 1894.

SECTION 1. Be it enacted by the General Assembly of the State of

Ohio, That section 3 of an act entitled, "An act to prevent fraud and deception in the manufacture and sale of oleomargerine and promote public health in the State of Ohio," be amended to read as follows:

SEC. 3. Every proprietor, keeper, manager or person in charge of any hotel, boat, railroad car, boarding-house, restaurant, eating-house, lunch counter or lunch-room, who therein sells, uses, serves, furnishes or disposes of or uses in cooking, any oleomargerine, shall display and keep a white placard in a conspicuous place, where the same may be easily seen and read, in the dining-room, eating-room, restaurant, lunch-room or place where such substance is furnished, served, sold or disposed of, which placard shall be in size not less than ten by fourteen inches, upon which shall be printed in black letters, not less in size than one and a half inches square, the words "Oleomargerine sold and used here," and said card shall not contain any other words than the ones above described; and such proprietor, keeper, manager or person in charge shall not sell, serve or dispose of such substance as for butter when butter is asked for or purported to be furnished or served.

SECTION 2. Section 3 of the above-recited act, passed May 16, 1894, is hereby repealed, and this act shall take effect and be in force from and after its passage.

Upon consideration thereof, the court found the defendant guilty as he stood charged in the affidavit, and fined him fifty dollars and costs, and ordered that he stand committed and held a prisoner until fine and costs were paid, to all of which judgment and finding defendant excepted. Defendant being in court, refused to pay said fine and costs.

Thereupon the court ordered that a mittimus be made out, and that he be taken in charge of by Constable J. L. Shafer, which was accordingly done.

The agreement of facts constitutes all the evidence introduced in the trial of this case.

Defendant tenders this his bill of exceptions, which is allowed, signed and ordered to be made part of the record.

J. R. THOMSON, *J. P.*

And afterwards, to wit, on the 26th day of April, A. D. 1897, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

16 *Entry.*

Journal 4, page 84.

This day came the respondent to the writ hereinbefore issued and produced in court the body of the said J. B. Thomas. And said application coming on to be heard upon the evidence adduced and arguments of counsel, the court being fully advised, finds that said petitioner is unlawfully restrained of his liberty.

It is therefore considered and ordered by the court that said J. B.

Thomas be discharged from the custody of said respondent and that he go hence without day.

To which finding, judgment and order said respondent by his counsel excepts and gives notice of appeal, and the court allows said appeal to be perfected within sixty days from the entry hereof, and fixes the bond therefor at five hundred dollars.

And afterwards, to wit, on the 13th day of May, A. D. 1897, the following petition for appeal was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Petition for Appeal.

The United States Circuit Court of Appeals for the Sixth Circuit, Term of May, A. D. 1897.

In re Application of J. B. THOMAS for Writ of *Habeas Corpus*. No. 5042. Appeal.

The State of Ohio, by its attorneys, C. H. Bosler and D. L. Sleeper, feeling itself aggrieved by the order and judgment entered on the 26th day of April, 1897, in the above-entitled proceeding, does hereby appeal from said order to the circuit court of appeals for the sixth circuit, and pray- that *their* appeal may be allowed, and that a transcript of the record of proceedings and papers upon which said order was made, duly authenticated, may be sent to the circuit court of appeals of the sixth judicial circuit of the United States.

C. H. BOSLER &
D. L. SLEEPER,
Attorneys for the State of Ohio.

And afterwards, to wit, on the 13th day of May, A. D. 1897,
17 the following assignment of error was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Assignment of Errors.

United States Circuit Court of Appeals for the Sixth Circuit, Term of May, A. D. 1897.

In re Application of J. B. THOMAS for a Writ of *Habeas Corpus*.

Assignment of errors.

Afterwards, to wit, on the 11th day of May, A. D. 1897, in this same term, before the honorable judges of the circuit court of appeals for the sixth circuit, in the city of Cincinnati, Ohio, come- the State of Ohio, by its attorneys, C. H. Bosler and D. L. Sleeper, and say- that in the record of the proceedings aforesaid there is manifest error in this, to wit, the court erred in granting the application for a writ of *habeas corpus*.

The court erred in holding that the State had no jurisdiction of

the person of the defendant for the crime of which he stood charged, as appears in the record.

The court erred in holding that defendant was acting in pursuance of a law of the U. S. in doing the act complained of.

The court erred in holding that the sentence of the justice of the peace of Montgomery county, Ohio, was void.

For other errors appearing upon the record.

Whereas, by the law of the land, said writ of *habeas corpus* should have been discharged and the prisoner remanded to the constable having him in custody.

The State of Ohio therefore prays that the order and judgment aforesaid may be reversed, annulled and held for naught, and for such other relief as may be proper in the premises.

C. H. BOSLER &
D. L. SLEEPER,
Attorneys for the State of Ohio.

And afterwards, to wit, on the 18th day of May, A. D. 1897, the following entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Entry.

Journal 4, page 108.

Appeal Allowed; Bond Fixed at $500.00.

18 And now comes the State of Ohio, having heretofore duly filed its petition in appeal and assignment of errors, the court doth now, upon the application of *his* attorneys, allow the appeal herein, and doth tax the appeal bond in the sum of $500.00.

And afterwards, to wit, on the 18th day of May, A. D. 1897, the following appeal bond was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Appeal Bond.

Circuit Court of the United States, Southern District of Ohio, *ss.*, Western Division.

In re J. B. THOMAS.

Habeas corpus.

Know all men by these presents, that we, Joseph E. Blackburn and David L. Sleeper, are held and firmly bound unto J. B. Thomas in the sum of five hundred dollars, to be paid to the said J. B. Thomas, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, dated this 29th day of April, 1897.

Whereas, the State of Ohio desires to appeal said cause to the court of appeals of the United States for the southern district of Ohio, to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio.

Now, therefore, the condition of this obligation is such, that if the above-named The State of Ohio shall prosecute its appeal in said court of appeals to effect and answer all damages and costs, that may be adjudged against it, then this obligation to be void, otherwise to remain in full force and virtue.

JOSEPH E. BLACKBURN. [SEAL.]
DAVID L. SLEEPER. [SEAL.]

The above security is approved.

WM. H. TAFT,
Circuit Judge of the United States, S. D. Ohio.

19 UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, }

I, David L. Sleeper, the surety above named, do solemnly swear that after paying my just debts and liabilities, I am worth two thousand ($2,000.00) dollars in real estate in my own name, situate in the county of Franklin, in said district.

D. L. SLEEPER.

Sworn to before me, the 14th day of May, 1897.

[SEAL.] C. P. WHITE,
Deputy Clerk U. S. Circuit Court, S. D. O.

THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Western Division, }

I, Benjamin R. Cowen, clerk of the circuit court of the United States, within and for the division and district aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said court in the above-entitled cause, as the same appears of record and on file in the clerk's office of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at the city of Cincinnati, Ohio, this 21st day of May, A. D. 1897.

[SEAL.] B. R. COWEN, *Clerk,*
By JANIE W. F. COWEN,
Deputy Clerk.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, } ss:
Sixth Judicial Circuit, }

To J. B. Thomas, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the sixth circuit,

to be holden at the city of Cincinnati, in said circuit, on the * 17th day of June next, pursuant to a petition for appeal filed in the clerk's office of the circuit court of the United States for the southern district of Ohio, W. D., wherein The State of Ohio is appellant and you are appellee, to show cause, if any there be, why the decree
20 rendered against the said appellant, as in the said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this eighteenth day of May, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States of America the one hundred and twenty-first.

WM. H. TAFT,
Circuit Judge, Sixth Judicial Circuit of the United States.

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* Not exceeding 30 days from the day of signing.

Received this writ on the 18th day of May, 1897, and on May 19th, 1897, I delivered a copy of within citation to Judson Harmon, attorney for appellee, who accepted service of same.

MICHAEL DEVANNEY,
U. S. Marshal, S. D. O.
JOHN W. DEVANNEY, *Deputy.*

Service	$2 00
Copy	50
Mileage	06
	$2 56

No. 5042. Marshal's civil docket No. 331. United States circuit court, southern district of Ohio, western division. In the matter of J. B. Thomas for a writ of *habeas corpus, ex parte.* Citation. Filed May 19, 1897. B. R. Cowen, clerk.

21 *Opinion by Taft, Circuit Judge.*

Petitioner Discharged.

Circuit Court of the United States, Southern District of Ohio, Western Division.

In the Matter of J. B. THOMAS, *Ex Parte, Habeas Corpus.*

In the case J. B. Thomas has filed a petition for a writ of *habeas corpus.* His petition states that he was on March 2d, 1897, and has since continued to be governor of the Central branch of the National Home for Disabled Volunteer Soldiers, which is located in Montgomery county, Ohio, on certain grounds purchased, held and used by the United States for the purposes set forth in an act entitled "An act incorporating a national military and naval asylum for

the relief of the totally disabled officers and men of the volunteer forces of the United States," approved March 3, 1865, and the act amendatory thereof approved March 21, 1866, and other acts amendatory and supplementary thereto; that he is unjustly and unlawfully detained and deprived of his liberty at the city of Dayton, in the county aforesaid by one L. J. Shafer, a constable of said county, by virtue of a certain warrant of commitment issued by one J. R. Thompson, a justice of the peace within and for said county, charging that the petitioner as governor as aforesaid, did on March 2d, 1897, unlawfully serve and furnish to the inmates of said National Military Home for Disabled Volunteer Soldiers, as food to be then and there eaten by said inmates, certain oleomargerine, in violation of the statutes of the State of Ohio; that petitioner being brought before said justice of the peace refused to plead to said charge and moved to dismiss the same on the ground that the act upon which said proceeding was founded were done by him in the discharge of his duty as governor of said national home under the authority of the board of managers in charge of said institution by virtue of the acts of Congress aforesaid, and by — authority of said acts, that they were entirely done and performed on the grounds acquired, used and controlled by the United States for the purpose of said home and with respect to the inmates thereof only in their maintenance and support by the United States and not otherwise, said acts having consisted merely in distributing to them supplies procured for such use by authority of Congress and said board of managers; that the facts averred above as the ground of said motion are true; that notwithstanding the premises said
22 justice of the peace proceeded to try petitioner on said charge, found and adjudged him guilty of the offense aforesaid, and sentenced him to pay a fine of fifty dollars and stand committed until the same should be paid and thereupon issued the warrant of commitment aforesaid.

Petitioner avers that said justice of the peace had no jurisdiction over the lands and territory whereon said acts were done or over the petitioner by reason of said acts, and that said proceedings and warrant of commitment are wholly void.

A writ of *habeas corpus* issued upon this petition. The body of the petitioner was produced into court. The constable made a return that he held the said J. B. Thomas under the commitment of a magistrate as averred in the petition. On the hearing in this court it appeared that there was an agreed statement of facts in the cause before the justice of the peace as follows:

"The following facts are agreed upon to support the issues in the above-entitled cause:

It is agreed on behalf of the State of Ohio, Charles H. Bosler, its attorney in this action being present and consenting thereto, and the defendant J. B. Thomas, being present and with counsel also agreeing thereto.

1. That on the 2d day of March, 1897, Joseph E. Blackburn was and now is the food and dairy commissioner of the State of Ohio.

2. That on the 2d day of March, 1897, J. B. Thomas was and now

is the duly chosen and acting governor of the Central branch of the National Home for Disabled Volunteer Soldiers located in the county of Montgomery, State of Ohio, and as said governor was in charge of the eating-house of the said Central branch of the National Home for Disabled Volunteer Soldiers.

3. Said eating-house is used by said J. B. Thomas for serving and furnishing to the inmates of said Central branch of the National Home for Disabled Volunteer Soldiers their daily food or rations, and is the only place so provided at said national home, and is known as the mess-room of the said Central branch of the National Home for Disabled Volunteer Soldiers, situate on the grounds purchased, held and used by the United States therefor, and the acts complained of herein consisted in causing oleomargerine to be served and furnished, on the 2d day of March, 1897, as food and as part of the rations furnished to the inmates thereof under appropriation made by the Congress of the United States, for the support of said inmates; and that no placard in size not less than 10 x 14 inches, having printed thereon in black letters not less in size than
23 1½ inches square the words "Oleomargerine sold and used here," was displayed in said eating-house.

4. The affidavit in the cause is made in conformity with an act of the General Assembly of the State of Ohio, (Ohio Laws, vol. 92, page 23), entitled "An act to amend section 3 of an act entitled 'An act to prevent fraud and deception in the manufacture and sale of oleomargerine and promote public health in the State of Ohio,'" passed May 16, 1894.

"SECTION 1. Be it enacted by the General Assembly of the State of Ohio, That section 3 of an act entitled 'An act to prevent fraud and deception in the manufacture and sale of oleomargerine and promote public health in the State of Ohio' be amended to read as follows:

SECTION 3. Every proprietor, keeper, manager or person in charge of any hotel, boat, railroad car, boarding-house, restaurant, eating-house, lunch counter, or lunch-room, who therein sells, uses, serves, furnished or disposes of or uses in cooking, any oleomargerine, shall display and keep a white placard in a conspicuous place, where the same may be easily seen and read, in the dining-room, eating-room, restaurant, lunch-room, or place where such substance is furnished, served, sold or disposed of, which placard shall be in size not less than ten by fourteen inches, upon which shall be printed in black letters, not less in size than one and a half inches square, the words 'Oleomargerine sold and used here,' and said card shall not contain any other words than the ones above described and such proprietor, keeper, manager or person in charge shall not sell, serve or dispose of such substance as for butter when butter is asked for or purported to be furnished or served.

SECTION 2. Section 3 of the above-recited act, passed May 16, 1894, is hereby repealed, and this act shall take effect and be in force from and after its passage."

By the act of March 3d, 1865 (13 Statutes at Large, 509); the act of 21st of March, 1866 (14 Statutes at Large, page 10); the act of January 23d, 1873 (23d Statute-at Large, 417); the act of March 3d,

1875 (18 Statutes at Large, 359); and the act of Feb. 26th, 1875 (vol. 18, page 524), a National Home for Disabled Volunteer Soldiers was established and the legislation above indicated has been embodied in sections 4825 to 4837 inclusive, of the Revised Statutes of the United States. These sections are now under the chapter 3d of title 59 of "Hospitals and asylums." Section 4825 establishes a board of managers of such home who are to have perpetual succession with the power of holding personal and real property and of suing and being sued. They are also given the power to
24 make rules and by-laws not inconsistent with the law, for the purpose of carrying on the business and government of the home and to fix penalties thereto.

SEC. 4829 provides that the officers of the home shall consist of a governor, a deputy governor, a secretary and a treasurer, and such other officers as the managers may deem necessary.

SEC. 4830 provides that the board of managers shall have authority to procure from time to time, at suitable places, sites for military homes for all persons serving in the Army of the United States at any time in the war of the rebellion, not otherwise provided for, who have been or may be disqualified for procuring their own support by reason of wounds received or sickness contracted while in the line *in* their duty during the rebellion; and to have the necessary buildings erected, having due regard to the health of location, facility of access, and capacity to accommodate the persons entitled to the benefits thereof.

SEC. 4831 appropriates all stoppages or fines adjudged against officers and soldiers by sentence of court-martial or forfeitures on account of desertion and all moneys due deceased officers and soldiers unclaimed for three years after their death to the establishment and support of the home. The managers are also authorized to receive donations, money or property for the benefit of the home, and to hold the same for its exclusive use.

SEC. 4832 provides who of the officers and soldiers of the Government of the United States shall be entitled to the benefit of the national home.

SEC. 4834 provides that the board of managers shall make an annual report of the condition of the home to Congress.

SEC. 4835 provides that "All inmates of the National Home for Disabled Volunteer Soldiers shall be subject to the rules and articles of war, and in the same manner as if they were in the army."

Under the laws of 1865-'66 the first board of managers purchased real estate in Montgomery county, near Dayton, Ohio, and there erected buildings to constitute a national home. Since that time branches have been established in Augusta, Maine; Milwaukee, Wisconsin, and Hampton, Virginia.

On April 13th, 1867, the legislature of Ohio passed the following act:

"SEC. 1. That jurisdiction of the lands and their appurtenances, which may be acquired by donation or purchase by the managers of the National Asylum for Disabled Volunteer Soldiers
25 within the State of Ohio, for the uses and purposes of said asylum, be, and is hereby, ceded to the United States of

America; provided, however, that all civil and criminal process issued under the authority of the State of Ohio, or any officer thereof, may be executed on said lands and in the buildings which may be located thereon, in the same way and manner as if jurisdiction had not been ceded as aforesaid; and provided, further, that nothing in this act shall be construed to prevent the officers, employés and inmates of said asylum, who are qualified voters of this State, from exercising the right of suffrage to all township, county and State elections, in the township in which the said national asylum shall be located."

The second section of the same act exempts all the property, real and personal, held by the board of managers for the uses and purposes of the asylum, from taxation and assessment, "so long as the same shall remain the property of the United States, for the uses of the national asylum."

In Sinks *vs.* Reese, 19 O. S., 306, the question arose whether an inmate of the national home at Dayton had the right of suffrage as a citizen of the State of Ohio, and the supreme court of Ohio held:

"The inmates of the home, resident within such territory, being within the exclusive jurisdiction of a government other than that of the State within whose boundaries such asylum or territory may be situate, are not residents of such State, within the meaning of article —, sec. 1 of the constitution of Ohio; and where the constitution of such State confers the elective franchise upon residents thereof alone, the inmates of such asylum resident within such territory, are not entitled to vote at any election held within and under the laws of such State."

Thereupon Congress, by the act of January 21st, 1871, 16 Statutes at Large, page 399, enacted "that the jurisdiction over the place purchased for the location of the 'National Asylum for Disabled Volunteer Soldiers,' under and by virtue of the act of Congress of March third, 1865, entitled 'An act to incorporate a national military and naval asylum for the relief of the totally disabled officers and men of the volunteer forces of the United States,' and the act of March 21st, 1866, amendatory thereto, and upon which said asylum is located, is hereby ceded to the State of Ohio and relinquished by the United States. And the United States shall claim or exercise no jurisdiction over said place after the passage of this act; provided, that nothing contained in this act shall be construed to impair the powers and rights heretofore conferred upon the
26 board of managers of the National Asylum for Disabled Volunteer Soldiers incorporated under said act, in and over said territory."

In Renner *vs.* Bennett, 21 O. S., p. 431, the supreme court of Ohio, in construing the act of Congress of January 21st, 1871, held that its "effect was to restore to the State its jurisdiction over the territory, but without the power to violate the charter rights of the corporation, or rather, of the United States claiming and enjoying them through and by the corporation; thus putting the State in the same relation to this corporation that it sustains towards such of its own corporations as have an irrevocable and inviolable char-

ter, and therefore that — the territory upon which the home stood the inmates of the home were residents of the State and were legal voters therein."

TAFT, *Circuit Judge:*

It is unnecessary, in my view, to consider the question what is the territorial jurisdiction of the State of Ohio over the land occupied by the national home at Dayton. Let it be conceded that the case presented upon the petition, and the facts shown at the hearing is not different from what it would have been had the legislature of Ohio never passed any act ceding jurisdiction to the United States over the land acquired for the purpose of a national military home. In such a case, can it be maintained that the legislature of the State of Ohio may pass an act which shall regulate in any way the manner in which Federal governmental functions shall be discharged by the board of managers of the national home as agents of the national Government? It is very clear to me that the question must be answered in the negative. Nor can there be any doubt that the acts of the petitioner complained of and made the ground for prosecution under the State law were acts in pursuance of the authority of the national Government, reposed in it by the Constitution of the United States. By that instrument Congress is given power by taxation to provide for the common defense and general welfare of the United States. It is given power to declare war, to raise and support armies, to provide and maintain a navy, to make rules for the government and regulation of the land and naval forces, to provide for calling forth the militia, to suppress insurrections and repel invasions, to provide for organizing, arming and disciplining the militia and for governing such part of them as may be employed in the service of the United States and to make all laws which shall be necessary and proper for carrying into execution these powers.

27 In the case of United States *vs.* Getty-burg Electric Railway Company, 160 U. S., 668, it was held that the act providing for the condemnation of land for the purpose of fencing in and preserving the lines of battle at the battle of Gettysburg, and of making a national park of the same, was within the power of Congress. It was objected that the purpose of the act could not be for "the public use," within the powers of the General Government. Upon this subject Mr. Justice Peckham, speaking for the Supreme Court, said:

"Congress has power to declare war and to create and equip armies and navies. It has the great power of taxation to be exercised for the common defense and general welfare. Having such powers, it has such other and implied ones as are necessary and appropriate for the purpose of carrying the powers expressly given into effect. Any act of Congress which plainly and directly tends to enhance the respect and love of the citizen of the institutions of this country and to quicken and strengthen his motives to defend them, and which is germane to and intimately connected with and appropriate to the exercise of some one or all of the powers granted by Congress must be valid. * * * Can it be that the Govern-

ment is without power to preserve the land and properly mark out the various sites upon which this struggle took place? Can it not erect the monuments provided for by these acts of Congress, or even take possession of the field of battle in the name and for the benefit of all the citizens of the country for the present and for the future? Such a use seems necessarily not only for public use, but one so clearly connected with the welfare of the Republic itself as to be within the powers granted Congress by the Constitution for the purpose of protecting and preserving the whole country. It would be a great object-lesson to all who looked upon the land thus cared for, and it would show a proper recognition of the great things that were done there on those momentous days. By this use the Government manifests, for the benefit of all its citizens, the value put upon the services and exertions of the citizen soldiers of that period. Their successful effort to preserve the integrity and solidarity of the great Republic of modern times is forcibly impressed upon every one who looks over the field. The value of the sacrifices then freely made is rendered plainer and more durable by the fact that the Government of the United States, through its representatives in Congress assembled, appreciates and endeavors to perpetuate it by this most suitable recognition. * * * The right to take
28 land for cemeteries for the burial of the deceased soldiers of the country rests on the same footing and is connected with and springs from the same powers of the Constitution. It seems very clear that the Government has the right to bury its own soldiers and to see to it that their graves shall not remain unknown or unhonored."

The same power that exists to create national parks and to create national cemeteries is exercised in the erection and maintenance of a national home, to care for the defenders of the nation, who, though not killed, were disabled and wounded in the defense. The housing and feeding of such persons is then a Federal governmental function and duty. When the Government of the United States purchases land in a State for the purpose of discharging such a duty is it not within the power of the State legislature to interfere with or regulate the mode in which it shall be performed. What it does for this purpose, is exactly as much within its complete control as when its quartermaster furnishes food to its soldiers, or when its pension agents distribute money to its pensioners. It is entirely immaterial in what place, within the jurisdiction of the Government of the United States, the duty is discharged. State lines cannot affect or modify the complete control which the Federal Government and its agents and officers, duly authorized, have over the manner of discharging it. The jurisdiction of the State government in such a case is excluded not because of the place where the act is done, but because that which is being done is the business of the United States, and such business is as completely beyond the influence and control of the State government as if it were not done within the territory of the State. It is in evidence that in the report made by the board of managers to Congress provided by law, an appropriation was asked for oleomargerine, and that the appropriation was made

by Congress to cover the proposed expenditure. Would it be contended that if Congress were to pass an act providing that oleomargerine should be served by its quartermaster in the messes of its troops and the State were to pass a law forbidding the use of it as an unhealthful food, that such a law could affect officers obeying the laws of Congress in thus furnishing oleomargerine within the State's lines to military forces of the United States, and would subject them to punishment before a State tribunal for violation of the State law? Clearly not. It seems hardly necessary to me to give illustration to be found in many decisions of the Supreme Court of the United States of cases in which it has been held that no
29 State can pass a law which shall in any manner interfere with or prevent the due exercise of its constitutional functions by the United States Government through its officers and agents.

In *Ex parte* Siebold, 100 U. S., 371, 394, Mr. Justice Bradley said:

"It is argued that the preservation of peace and good order in society is not within the powers confined to the Government of the United States, but belongs exclusively to the States. Here again we are met with the theory that the Government of the United States does not rest upon the soil and territory of the country. We think that this theory is founded on an entire misconception of the nature and powers of that Government. We hold it to be an incontrovertible principle that the Government of the United States may, by means of physical force exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws and hence the power to keep the peace to that extent.

This power to enforce its laws and to execute its functions in all places does not derogate from the power of the State to execute its laws at the same time and in the same place. The one does not exclude the other, except where both cannot be executed at the same time. In that case, the words of the Constitution itself show which is to yield. 'This Constitution, and all laws which shall be made in pursuance thereof, * * * shall be the supreme law of the land.'"

Again, in the case of Tennessee *vs.* Davis, 100 U. S., 257, 262, Mr. Justice Strong, quoting from Martin *vs.* Hunter (1 Wheat., 363), said:

"The General Government must cease to exist whenever it loses the power of protecting itself in the exercise of its constitutional powers," and then proceeded:

"It can act only through its officers and agents, and they must act with the States. If, when thus acting, and within the scope of their authority, those officers can be arrested and brought to trial in a State court, for an alleged offence against the law of the State, yet warranted by the Federal authority they possess and if the General Government if powerless to interfere at once for their protection—if their protection must be left to the action of the State court—the operations of the General Government may at any time be arrested at the will of one of its members. The legislation of a

State may be unfriendly. It may affix penalties to acts done under the immediate direction of the national Government, and in
30 obedience of its laws. It may deny the authority conferred by those laws. The State court may administer not only the laws of the State, but equally Federal laws in such manner as to paralyze the operations of the Government. And even, if after trial and final judgment in the State court, the case can be brought into the United States court, for review the officer is withdrawn from the discharge of his duty during the pendency of the prosecution, and the exercise of acknowledged Federal power arrested.

We do not think such an element of weakness is to be found in the Constitution. The United States is a Government with authority extending over the whole territory of the Union, acting upon the States and upon the people of the States. While it is limited in the number of its powers, so far as its sovereignty extends it is supreme. No State government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognizance of any subject which that instrument has committed to it."

The same principle was upheld by Mr. Justice Miller in the case of *In re* Neagle, 135 U. S., page 1.

In my judgment the governor of the soldiers' home was not subject to the law prescribing the manner in which oleomargerine should be served in eating-houses, not because the place in which he was serving the oleomargerine was without the territorial jurisdiction of the State of Ohio, but because that which he was doing was an act of the Government of the United States within its constitutional powers and wholly beyond the control and regulation of the legislature of the State of Ohio.

The petitioner is discharged.

THE UNITED STATES OF AMERICA, } *ss*:
Southern District of Ohio, }

I, Benjamin R. Cowen, clerk of the United States circuit court within and for the southern district of Ohio, do hereby certify that the foregoing is a true and correct copy of the original opinion filed on the 30th day of June, A. D. 1897, in the clerk's office of said court, in the above-entitled cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at the city of Cincinnati, O., this 7th day of September, A. D. 1897.

B. R. COWEN, *Clerk*,
[SEAL.] By ROB'T C. GEORGI,
Deputy Clerk.

31 No. 522. United States circuit court, southern district of Ohio, western division. In the matter of J. B. Thomas for a writ of *habeas corpus*. Opinion of Judge Taft. Filed Sep. 10, 1897. Frank O. Loveland, clerk. Filed June 30, 1897. B. R. Cowen, clerk. $5.35.

32 And afterwards, to wit, on June 3rd, 1897, an appearance was filed in said court in said cause, which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit, October Term, 1896.

In re J. B. THOMAS, *Ex Parte.* No. 522.

To the clerk of said court:

Please enter my appearance as counsel for the appellant.

D. L. SLEEPER.

And afterwards, to wit, on November 9th, 1897, a stipulation was filed in said cause; which stipulation reads and is as follows:

Stipulation for Continuance.

United States Circuit Court of Appeals for the Sixth Circuit.

In the Matter of the Petition of J. B. THOMAS for Writ of *Habeas Corpus.* # 522.

It is agreed between the parties in the above-entitled cause, by their attorneys, that the same be continued for hearing to the December term of court.

CHARLES H. BOSLER AND
DAVID L. SLEEPER,
Attorneys — the State of Ohio.
JUDSON HARMON,
For J. B. Thomas.

33 And afterwards, to wit, on February 8th, 1898, an entry was made upon the journal of said court which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

In the Matter of the Petition of J. B. THOMAS for Writ of *Habeas Corpus.*

Appeal from the circuit court of the United States for the southern district of Ohio, before Judges Lurton, Severens, and Clark.

This cause came on this day for hearing and was argued on behalf of the plaintiff in error by Mr. C. H. Bosler, and for the petitioner, J. B. Thomas, by Mr. Judson Harmon and Mr. D. W. Bowman, and the cause was continued until tomorrow morning for further argument.

And afterwards, to wit, on February 9th, 1898, and entry was made upon the journal of said court in said cause which is in the words and figures as follows:

In the Matter of the Petition of J. B. THOMAS for Writ of *Habeas Corpus*.

Appeal from the circuit court of the United States for the southern district of Ohio, before Judges Lurton, Severens, and Clark.

This cause came on for further hearing and was argued by Mr. D. L. Sleeper, for appellant, and was submitted to the court.

And afterwards, to wit, on April 5th, 1898, a decree was entered in said cause, which reads and is as follows:

34 United States Circuit Court of Appeals for the Sixth Circuit.

In the Matter of the Petition of J. B. THOMAS for Writ of *Habeas Corpus*.

Appeal from the circuit court of the United States for the southern district of Ohio.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of Ohio and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the order of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

And afterwards, to wit, on April 14th, 1898, and opinion was rendered in said cause, which is in the words and figures as follows:

Opinion.

35 United States Circuit Court of Appeals, Sixth Circuit.

Submitted February 9, 1898; decided April 5, 1898.

In re the Petition of J. B. THOMAS—STATE OF OHIO, Appellant. No. 522.

Appeal from the circuit court of the United States for the southern district of Ohio, western division.

Before Lurton, circuit judge, and Severens and Clark, district judges.

Per curiam:

The facts of this case are stated in the opinion of Taft, circuit judge, who heard the case in the court below. His opinion is reported in 82 Fed. Rep., 304. With respect to the question of law involved, we concur in the reasoning upon which Judge Taft's opinion proceeds (and which we are content to adopt as our own), and in the conclusion which he reached, save that we prefer to rest our approval of the order made by the court below upon the ground that inasmuch as the legislature of Ohio had no power to regulate the

conduct of this adminstrative agency of the national Government by such a statute as is here in question, it ought to be presumed that the legislature did not intend it to have such an application, and that the statute should be construed accordingly.

The order of the court below is affirmed with costs.

36 And afterwards, to wit, on May 11th, 1898, a petition for appeal was filed, which reads and is as follows:

Petition for Appeal.

Supreme Court of the United States.

In re Application of J. B. THOMAS for Writ of *Habeas Corpus.*

The State of Ohio, by its attorneys, Charles H. Bosler, David L. Sleeper, and Otto J. Renner, feeling itself aggrieved by the order and judgment entered on the 5th day of April, 1898, in the above-entitled proceeding in the United States circuit court of appeals for the sixth circuit, does hereby appeal from said order to the Supreme Court of the United States and pray that *their* appeal may be allowed, and that a transcript of the record of proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

CHARLES H. BOSLER,
DAVID L. SLEEPER, AND
OTTO J. RENNER,
Attorneys for the State of Ohio.

Allowed by—
HORACE H. LURTON, *Judge.*

And afterwards, on the same day, to wit, on May 11th, 1898, assignments of error were filed which read and are as follows:

37 *Assignments of Error.*

Supreme Court of the United States.

In re the Application of J. B. THOMAS for a Writ of *Habeas Corpus.*

Now comes the State of Ohio, by its attorneys, Charles H. Bosler, David L. Sleeper, and Otto J. Renner, and represents to the honorable judges of the Supreme Court of the United States that there is manifest error in the record of the proceedings in the above-entitled cause in this, to wit, the United States circuit court of appeals for the sixth circuit erred in affirming the order and judgment of the circuit court of the United States for the southern district of Ohio, western division.

The court erred in granting the application for a writ of *habeas corpus.*

The court erred in holding that the State had no jurisdiction of

the person of the defendant for the crime of which he stood charged, as appears in the record.

The court erred that the defendant was acting in pursuance of a law of the United States in doing the act complained of.

The court erred in holding that the sentence of the justice of the peace of Montgomery county, Ohio, was void.

For other errors appearing in the record.

Whereas by the law of the land said writ of *habeas corpus* should have been discharged and the prisoner remanded to the constable having him in custody.

The State of Ohio therefore prays that the order and judgment aforesaid may be reversed, annulled, and held for naught and
38 for such other relief as may be proper in the premises.

CHARLES H. BOSLER,
DAVID L. SLEEPER, AND
OTTO J. RENNER,
Attorneys for the State of Ohio.

And afterwards, on the same day, to wit, on May 11th, 1898, an order was entered in said cause clothed in the words and figures following:

United States Circuit Court of Appeals for the Sixth Circuit.

In the Matter of the Petition for Writ of *Habeas Corpus* by JOHN B. THOMAS.

This day came the State of Ohio, by its attorneys, and prays an appeal to the Supreme Court of the United States; which appeal is hereby granted and bond ordered in the sum of $—.

And afterwards, to wit, on June 4th, 1898, an order was entered in said cause which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

In the Matter of the Petition of J. B. THOMAS for Writ of *Habeas Corpus.*

39 On application of the clerk, the time for perfecting appeal in this case is extended sixty days.

And afterwards, to wit, on June 10th, 1898, a bond was filed in said court in said cause; which bond reads and is as follows:

Know all men by these presents that we, The State of Ohio, by J. E. Blackburn, as principal, and D. L. Sleeper, as surety, are held and firmly bound unto J. B. Thomas in the full and just sum of two hundred and fifty ($250.00) dollars, to be paid to the said J. B. Thomas, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a session of the United States circuit court of appeals for the sixth circuit, in a suit depending in said court between The State of Ohio, appellant, and J. B. Thomas, appellee, a decree was entered against the said The State of Ohio, and the said State of Ohio having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said J. B. Thomas, citing and admonishing him to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, D. C., on the 10th day of June next:

Now, the condition of the above obligation is such that if the said State of Ohio shall prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

40 Sealed and delivered in the presence of—

J. E. BLACKBURN,
Dairy and Food Commissioner. [SEAL.]
D. L. SLEEPER. [SEAL.]

Approved by—

——, ——.

41 United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } ss:

To J. B. Thomas, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, D. C., on the * 10th day of June next, pursuant to an appeal from the U. S. circuit court of appeals for the 6th circuit, wherein The State of Ohio is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 11 day of May, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-second.

HORACE H. LURTON,
Circuit Judge, &c., &c.

* Not exceeding 30 days from the day of signing.

Service accepted.

JUDSON HARMON,
Attorney for J. B. Thomas.

Cincinnati, June 1, 1898.

42 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record in the case of the petition of J. B. Thomas for writ of *habeas corpus*, No. 522, October term, 1897, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit, and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the sixth circuit, at the city of Cincinnati, Ohio, this twenty-fourth day of June, 1898.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

Endorsed on cover: Case No. 16,938. U. S. C. C. of appeals, 6th circuit. Term No., 353. The State of Ohio, appellant, *vs.* J. B. Thomas. Filed August 9th, 1898.

No. 353.

Motion to advance.

Office Supreme Court U. S.
FILED
SEP 21 1898
J. H. McKENNEY,
Clerk.

Filed Sept. 21, 1898.

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 353.

THE STATE OF OHIO, APPELLANT,

vs.

J. B. THOMAS.

MOTION TO ADVANCE.

The appellee, J. B. Thomas, moves the court to advance this cause and assign the same an early day for hearing on the following grounds:

Said Thomas is governor of the Central Branch of the National Home for Disabled Volunteer Soldiers at Dayton, Ohio, in charge of the management of the same under the acts of Congress and the direction of the board of managers. He was arrested by the State officers for alleged violation of the statute of Ohio concerning the use of oleomargarine. Such violation consisted in the purchase and use of oleomargarine at said home without compliance with requirements of the State law.

The governor duly challenged the authority of the State to hold him accountable for his official acts done for and

under the authority of the United States. His plea being overruled and sentence given, he applied to the Federal court for a writ of *habeas corpus*, which was granted. After full hearing he was discharged (see opinion of Judge Taft, 82 Fed., p. 304). This judgment was affirmed by the circuit court of appeals. The State officers have appealed here.

The case, therefore, is one of a purely public nature, the early decision of which is necessary to relieve the officers of both State and National Government from the embarrassment caused by this controversy.

We are authorized to say that counsel for the State officers unite in this motion.

Respectfully submitted.

JUDSON HARMON,
D. W. BOWMAN,
Counsel for Appellee.

We hereby accept service of notice of the above motion and unite in the same.

CHARLES H. BOSLER,
Counsel for Appellant.

DAYTON, OHIO, *September* 19, 1898.

[Endorsed:] Case No. 16,938. Supreme Court U. S., October term, 1898. Term No., 353. The State of Ohio, appellant, *vs.* J. B. Thomas. Motion to advance and acceptance of service of notice. Office Supreme Court U. S. Filed Sep. 21, 1898. James H. McKenney, clerk.

No. 353.
Bof. of Bosler & Renner for P. C.
Filed Jan. 9, 1899.

Supreme Court U. S.
FILED
JAN 9 1899
JAMES H. MCKENNEY
Clerk.

No. 353.

Supreme Court of the United States.

IN THE MATTER OF THE

Petition of J. B. Thomas for Writ of Habeas Corpus.

Brief for Plaintiff in Error.

CHARLES H. BOSLER,
OTTO J. RENNER,
Attorneys for Plaintiff in Error.

No. 353.

Supreme Court of the United States.

IN THE MATTER OF THE

Petition of J. B. Thomas for Writ of Habeas Corpus.

BRIEF FOR PLAINTIFF IN ERROR.

Statement.

THE petitioner is Governor of the Central Branch of the National Home for Disabled Volunteer Soldiers, located in Montgomery County, Ohio. He was arrested, tried, and convicted by a Justice of the Peace in said county upon a charge of serving and furnishing to the inmates of said Home oleomargarine, in violation of a statute of the State of Ohio. The question is one of jurisdiction: (*a*) over the territory; (*b*) over the act complained of.

The legislation of the State and of Congress involved in the case as follows:

Section 3 of the statute under which petitioner was arrested:

"SEC. 3. Every proprietor, keeper, manager, or person in charge of any hotel, boat, railroad car, boarding house, restaurant, eating house, lunch counter, or lunch room, who therein sells, uses serves, furnishes, or disposes of, or uses in cooking, any oleomargarine, shall display and keep a white placard in a conspicuous place, where the same may be easily seen and read, in the dining-room, eating-room, restaurant, lunch-room, or place where such substance is furnished, served, sold, or disposed of, which placard shall be in size not less than ten by fourteen inches, upon which shall be printed in black letters, not less in size than one and

a half inches square, the words, 'Oleomargarine sold and used here,' and said card shall not contain any other words than the ones above described, and such proprietor, keeper, manager, or person in charge shall not sell, serve, or dispose of such substance as for butter when butter is asked for or purported to be furnished or served."

92 Ohio Laws, p. 23.

Violation of said act is made a misdemeanor under Section 5 of the act passed May 16, 1894:

"SEC. 5. Any person violating any of the provisions of this act shall, upon conviction thereof, be fined not less than fifty dollars nor more than one hundred dollars."

91 Ohio Laws, p. 275.

Jurisdiction of the Justice of the Peace is in the county:

"Any Justice of the Peace, within his county and city, shall have jurisdiction in case of violation of the laws to prevent adulteration of food and drink, the adulteration and deception in the sale of dairy products," etc.

Rev. Stat. of Ohio, Sec. 3718 *a*.

The National Military Home was organized in pursuance of the acts of Congress, approved March 3, 1865, and March 21, 1866.

13 U. S. Stat. at Large, p. 509.
14 U. S. Stat. at Large, p. 10.

Said territory was purchased and the title conveyed to said corporation, and thereafter, on April 13, 1867, the Legislature of Ohio passed the following act, as amended May 16, 1868:

"WHEREAS, The managers of the National Asylum for Disabled Volunteer Soldiers have accepted the Ohio Soldiers' Home, and are now caring for the disabled volunteer soldiers of the State therein, and are about to locate a permanent branch of the National Asylum within this State, therefore,

"*Be it enacted by the General Assemble of the State of Ohio*, That the jurisdiction of the lands and their appurtenances which may be acquired by donation or purchase by the managers of the National Asylum for Disabled Volunteer

Soldiers within the State of Ohio, for the uses and purposes of said asylum, be and is hereby ceded to the United States of America; provided, however, that all civil or criminal process issued under authority of the State of Ohio or any officer thereof, may be executed on said lands and in the buildings which may be located thereon, in the same way and manner as if jurisdiction had not been ceded as aforesaid, and the officers, employees, and inmates of said asylum who are qualified voters of this State, by complying with the requirements of the laws that are now in operation or that may hereafter be enacted regulating State, county, and township elections in this State, shall have the right of suffrage at all township, county, and State elections, in the township in which the said asylum may be located."

Ohio Laws, Vol. 64, p. 149.

Said act was passed ceding jurisdiction to the United States of said territory in pursuance of the 17th clause of Section 8 of Article I. of the constitution of the United States, which provides that Congress shall "exercise exclusive legislation . . . . over all places purchased by consent of the legislature of the State in which the same shall be, for the erection of forts, arsenals, dockyards, and other needful buildings."

On January 21, 1871, the Congress of the United States passed an act receding and relinquishing to the State jurisdiction over said territory:

"*Be it enacted by the Senate and house of Representatives of the United States in Congress assembled*, That the jurisdiction over the place purchased for the location of the "National Asylum for Disabled Volunteer Soldiers," etc., and upon which said asylum is located, is hereby ceded to the State of Ohio and relinquished by the United States. And the United States shall claim or exercise no jurisdiction over said place after the passage of this act; provided, that nothing contained in this act shall be construed to impair the powers and rights heretofore conferred upon the Board of Managers of the National Asylum for Disabled Volunteer Soldiers, incorporated under said act, in and over said territory."

U. S. Stat. at Large, 41 Cong., p. 399.

CLAIM.

We contend that the Court below erred in not holding:

First. Jurisdiction over the territory is in the State.

Second. The acts complained of were not done by the Governor by authority of, or in compliance with, any law of the United States.

Third. The rights reserved to the Board of Managers by the act of recession are embodied in the act of incorporation; the State cannot legislate to defeat the object of the corporation; but its police regulations, within that limitation, must be obeyed.

Fourth. When a State statute and a Federal statute can be enforced harmoniously, it must be done.

ARGUMENT.

Congress can exercise exclusive legislation only over such district, not exceeding ten miles square, as may by session of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

U. S. Constitution, Art. I., Sec. 8, Par. 17.

The consent of the legislature of the States to the purchase is necessary before the United States can acquire jurisdiction, and it has been held that the title must be in the United States and not in a corporation, or the act of session is void.

In *re* O'Connor, Wis. Rep., Vol. XXXVII., p. 379.

In the case of the *United States* v. *Bevans*, 3 Wheaton, 388 Chief Justice Marshall, in delivering the opinion of the Court, construes the extent of a State's jurisdiction over crimes committed within the territorial limits of a State. The Court says in effect

that the jurisdiction of a State is coextensive with its territory and it cannot be deprived thereof except by cession of its legislature.

Exclusive jurisdiction is original and inherent in the State. To bring an offense within the jurisdiction of the courts of the Union, it must be shown to have been committed without the jurisdiction of any State. It is not the offense committed, but the place in which it is committed, which must be out of the jurisdiction of the State.

United States v. *Bevans*, 3 Wheaton, 388.

Offenses committed within this territory are cognizable by the laws of the State, unless inconsistent with the laws of the United States.

In *re* O'Connor, Wis. Rep., Vol. XXXVII., p. 379.
Clark v. *County*, Wis. Rep. 53, p. 67.
In *re* Kelly, Fed. Rep. 71, p. 545.

"To oust the State of its jurisdiction to support and maintain its laws, and punish crimes, it must be shown that an offense committed within the acknowledged limits of the State is clearly and exclusively cognizable by the laws and courts of the United States."

The People v. *Godfrey*, Johnson's Rep. (N. Y.) 17, p. 225.

The act of recession by Congress restored to the State all the jurisdiction it possessed previous to the act of cession to the United States by the General Assembly of the State.

Renner v. *Bennett*, 21 O. S., p. 431.

"And the United States shall claim or exercise no jurisdiction over said place after the passage of this act."

Act of Recession, U. S. Stat. at Large, Vol. VI., 41 Cong., p. 399.

The Renner case is cited and upheld by the Circuit Court of the United States for the Eastern District of Wisconsin.

In *re* Kelly, Fed. Rep. 71, p. 545.

It is claimed that the acts committed were done by the petitioner in the discharge of his duty as Governor of said National Home, under the authority of the Board of Managers in charge of said institution, by virtue of the acts of Congress incorporating the Home, and by authority of said acts; that they were entirely done and performed on the grounds acquired, used, and controlled by the United States, for the purpose of said home, and with respect to the inmates thereof, only in their maintenance and support by the United States, and not otherwise.

If the jurisdiction of the State of Ohio attaches to this territory, as upheld in the decisions above cited, can the Board of Managers of said Home, through its officers, violate the statute laws of the State having such jurisdiction when the acts constituting the infringement of the statute laws are not necessary for the government and management of the Home, for the purpose for which it was incorporated, nor authorized by any statute of the United States?

"Exclusive jurisdiction is coördinate with exclusive legislation, and this constitutes nothing less than absolute sovereignty; that is, the unlimited power to make, apply, and execute laws."

Renner v. *Bennett*, 21 O. S., p. 431.

This power is now vested in the State of Ohio over the territory in question. The power reserved to the Board of Managers, in the proviso of the act of recession, is to "have perpetual succession, with powers to take, hold, and convey real and personal property, establish a common seal, and to sue and be sued in the courts of law and equity, and to make by-laws, rules, and regulations, not inconsistent with law, for carrying on the business and government of the Home, and to affix penalties thereto."

U. S. Statutes, Sec. 4825.

Ever since the act of recession, in 1871, the inmates and officers of the Home have been held to be citizens of the township, county, and State in which the Home is located, and, as citizens of the State, have exercised all the rights and privileges that attach to every other citizen of the State, and are entitled to the equal protection of the laws of the State, as guaranteed to them under the Constitution.

U. S. Constitution, Art. XIV., Sec. 1.

The purchase of oleomargarine at the Home is made upon the recommendation of the Governor, who submits to the Board of Managers an itemized estimate of the expenses. An itemized statement of the expenses is also required to be submitted to Congress.

U. S. Stat. at Large, Vol. XXIX., p.377, par. 7.
U. S. Stat. at Large, Vol. XXIV., p. 222, par. 2.
U. S. Stat. at Large, Vol. XXV., p. 505, par. 7.

But in the act of Congress appropriating money for the maintenance of the Home, oleomargarine is not mentioned.

"An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1897, and for other purposes."

U. S. Stat. at Large, 54 Cong., p. —.

While it may be that the Governor of the Home serves and furnishes oleomargarine to the inmates thereof by authority of the Board of Managers in charge of said institution, it cannot be said that it is done by virtue of any act of Congress, as the act of Congress simply appropriates money "for subsistence," among the items of which is included "articles of food."

The proviso in the act of recession is " that nothing contained in this act shall be construed to impair the powers and rights heretofore conferred upon the Board

of Managers incorporated under said act in and over said territory." These powers and acts, so far as they affect the case, are to "make by-laws, rules, and regulations, not inconsistent with law, for carrying on the business and government of the Home, and to affix penalties thereto."

U. S. Rev. Stat., Sec. 4825.

The power to make by-laws certainly cannot be construed as a power to make laws; and at any rate the by-laws, rules, and regulations which they are authorized to make merely concern the discipline of the Home, as the words, "affix penalties thereto," would clearly indicate.

Held in *re* Kelly, above cited.
Renner v. *Bennett*, above cited.

The Board of Managers, through the officers of the Home, purchase and distribute all supplies. These supplies are purchased not altogether by money appropriated by Congress, but with any other moneys which may come into the hands of the managers through any other sources, as under Section 4831 of the U. S. Revised Statues the Board of Managers is authorized to receive all donations of money or property made by any person or persons for the benefit of the Home, and to hold or dispose of the same for its sole and exclusive use. The managers therefore do not depend solely upon appropriations from Congress, but as a charitable or eleemosynary corporation, can look to other sources than the Federal government for the means to carry into effect the purposes of the corporation.

Rev. Stat. U. S., Sec. 4831.

With the jurisdiction of the United States removed does not then this corporation stand in the same relation to the State as any other charitable corporation within its jurisdiction, to which it guarantees the right of perpetual succession and the power to make by-laws, rules, and regulations not inconsistent with law for its managment?

Held in *Renner* v. *Bennett*, above cited.

The oleomargarine law of Ohio is a valid exercise by the Legislature of the police power of the State. Similar laws have been upheld by the courts of several States.

Powell v. *Commissioners*, 114 Pa. State, 265.
Pierce v. *State*, 63 Md., 596.
McAllister v. *State*, 72 Md., 390.
Butler v. *Chambers*, 36 Minn., 69.
State v. *Addington*, 12 Mo. App., 214; 77 Mo., 110.
Waterbury v. *Newton*, 50 N. J. L., 534.
Palmer v. *State*, 39 O. S., 236.

In the case of *Powell* v. *Pennsylvania*, 127 U. S., 678, the Supreme Court of the United States held that laws enacted by the legislatures of the States for the public health were a legitimate exercise of the police power, and it was not in the province of the courts to inquire into the fact as to whether such legislation is unwise or unnecessary. Such appeals must be made to the legislature or to the ballot-box, and not to the judiciary.

Reference is made to Parker and Worthington on Public Health and Safety, Sections 285 to 294 inclusive, for a general review of the oleomargarine laws as coming under the police power of the State.

The question then arises, What is the nature and extent of the police power of the State? It is clearly established by the authorities that in the American constitutional system the power to establish the ordinary regulations of police has been left with the individual States, and it cannot be taken from them either wholly or in part and exercised under legislation of Congress. The authority of each of the States is supreme and exclusive, and each State has an undeniable and unlimited jurisdiction within its territorial limits to provide for the safety, welfare, and protection of its citizens, and this power is limited only by the Constitution of the United States and the constitution of each individual State.

Within that limit the Court cannot enquire into the wisdom or validity of the act.

Cooley's Const. Lim., pp. 704, 705, 706, and 707.
Parker & Worthington on Public Health and Safety, Secs. 1, 2, and 3.
Powell v. *Penn.*, 127 U. S., 678.

The Fourteenth Amendment to the United States Constitution does not take from the States the police powers reserved to them at the time of the adoption of the Constitution.

Cooley's Const. Lim., p. 11, Note 2, and cases cited.

The police power of the State cannot be defeated by legislation of Congress. Congress has no power to authorize a business within a State which is prohibited by the State.

License Tax Cases, 5 Wall., 462.

So a vessel registered, or enrolled, or licensed under the acts of Congress, may not only be stopped under the quarantine laws of a State before reaching her port of destination, but the cargo may, if infected, be committed to the flames, although the effect is to preclude the collection of duties that would otherwise accrue to the United States.

Gilman v. *Phila.*, 3 Wall., 713, 731.
Robbins v. *Shelby Dist.*, 120 U. S., 489, 493.

Where the powers of Congress and of the States can both work harmoniously and for the public good both should be obeyed.

Cooley on Const. Lim., p. 707.

Conceding to Congress the right to legislate for this territory, yet until Congress does legislate further than to grant to the corporation the powers enumer-

ated in Sec. 4825, U. S. Rev. Stat., the Board of Managers must give heed to the State laws.

If it were to be held that the police powers of the State, and the laws enacted by the State in its legitimate exercise of such powers would not apply to this territory, then not only the act of the legislature under which this arrest is made, but every other act of the legislature designed to protect the health and safety of the citizens of the State would not apply. This would exclude all quarantine laws, the inspection of all provisions under the inspection laws, and health laws, and every other law to which the inmates of this Home are entitled under the constitutional guarantee that all its citizens shall have the right to the equal protection of the laws.

Respectfully submitted,

CHARLES H. BOSLER,

OTTO J. RENNER,

Attorneys for Plaintiff in Error.

No. 353.

Brf. of Harmon & Bowman for Appe

FILED
JAN 9 1899
JAMES H. McKENNEY,
Clerk

The Robert Clarke Company, Printers, Cincinnati. [January, 1899.

Filed Jan. 9, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1898.

The State of Ohio,

Appellant.

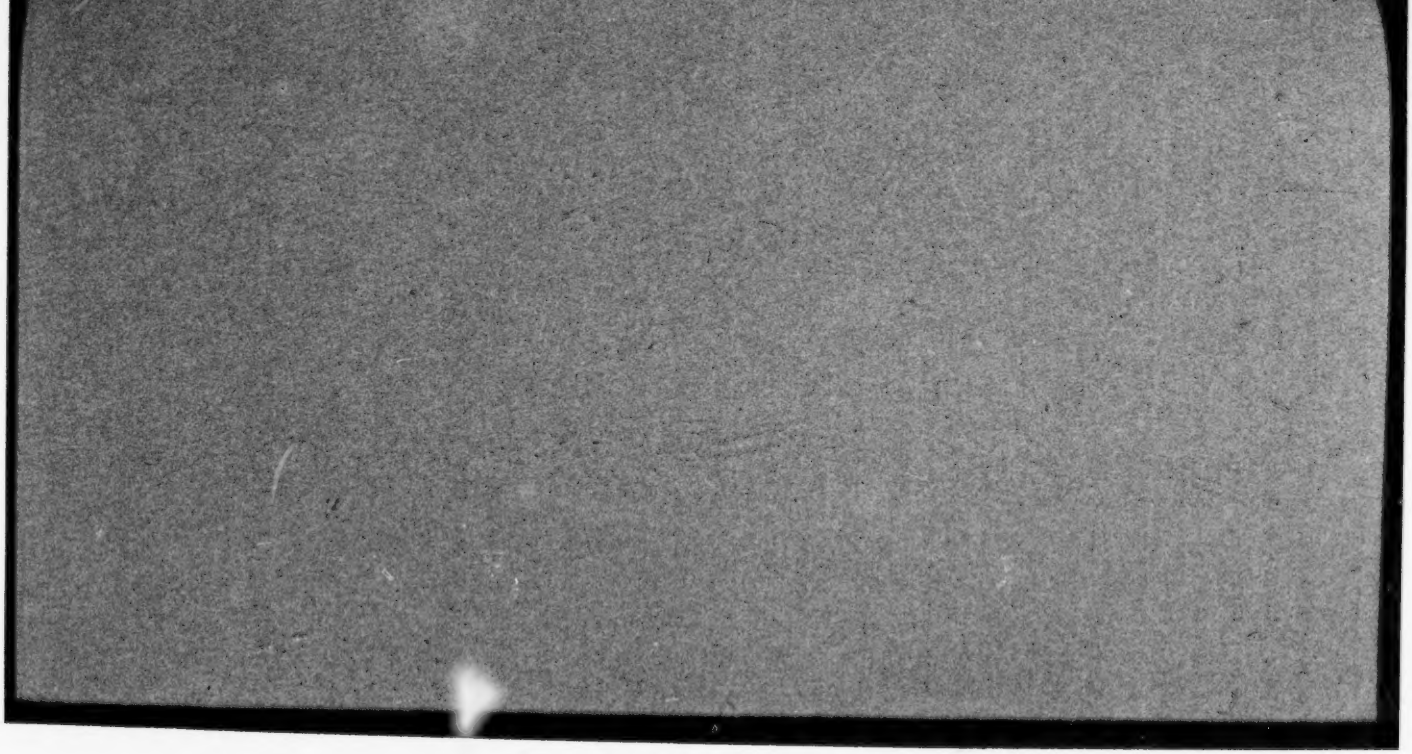
No. 353.] *vs.*

J. B. Thomas.

On Appeal from the Circuit Court of Appeals for the Sixth Circuit.

BRIEF FOR APPELLEE.

JUDSON HARMON,
D. W. BOWMAN.



The Robert Clarke Company, Printers, Cincinnati. [*January, 1899.*

Supreme Court of the United States.

OCTOBER TERM, 1898.

The State of Ohio,

Appellant.

No. 353.] *vs.*

J. B. Thomas.

On Appeal from the Circuit Court of Appeals for the Sixth Circuit.

BRIEF FOR APPELLEE.

STATEMENT.

The appellee was arrested and brought before a justice of the peace of Montgomery County, Ohio, on a charge of violating the statute of Ohio, which requires every "person in charge of any hotel . . . or eating house, etc., who therein sells, uses, serves, furnishes or disposes of, or uses in cooking, any oleomargarine," to display a placard announcing such fact. (92 O. L. p. 23. Rec. 9.)

He declined to plead to the charge, and moved its dismissal for want of jurisdiction, "because the acts done by him, referred to in the affidavit filed herein, were done solely as Governor of the Central Branch of the National Home for Disabled Volunteer Soldiers, under and by virtue of the

laws of the United States, and by authority of the Board of Managers of said National Home, on the grounds belonging to the United States, and used and occupied for the purposes of said Home, and with respect to the inmates of said Home only." (Rec. 10.) The justice overruled the motion, whereupon he was tried, convicted and sentenced to a fine, and to stand committed and held a prisoner until the fine and costs were paid.

The facts were agreed (Rec. 11). They show that the statements upon which he moved the dismissal were true, and that no placard was displayed, as required by the statute of Ohio.

Upon his conviction and committal, he sued out a writ of *habeas corpus* before Honorable William H. Taft in the Circuit Court of the United States for the Southern District of Ohio, who, upon hearing, discharged him from custody. (See his opinion, Rec. 16.) The Circuit Court of Appeals, on error, affirmed this judgment. (See opinion, Rec. 26.)

The "eating-house" mentioned in the affidavit is admitted to have been the "mess-room" of the Soldiers' Home at Dayton, "situate on the grounds purchased, held and used by the United States," for the purposes of such Home; that what the petitioner did was to cause oleomargarine to be served and furnished "as food and as part of the rations furnished to the inmates thereof under appropriations made by the Congress of the United States for the support of said inmates." (Rec. 11.)

If this mess-room is one of the places covered by the language of the statute of Ohio, and if the petitioner was the "manager or person in charge of" the same within its intent and meaning, then it is admitted that, as he did not comply with the requirements of that statute, he was properly convicted if he was amenable to the State law.

The only questions are:

1. Do the terms of that statute include the petitioner and such mess-room?

2. If they do, was he triable under that statute in the State court for acts done by him as a Federal officer in the conduct of an institution committed to his charge by the laws of the United States?

ARGUMENT.

We maintain:

1. That the terms of the statute do not include the person or the place in question, apart from their Federal character.

2. If they do, the statute must be held not intended to apply to the petitioner; and, even it so intended, it can not be enforced against him by the courts of Ohio.

I.

The language of the statute was plainly meant to include only such establishments as are conducted, directly or indirectly, for gain. The enumeration is of such places only, and, while the words "uses, serves, furnishes, or disposes of," etc., might seem, at first glance, intended to cover other than commercial disposal of oleomargarine, they clearly appear, looking at the entire statute and at the subject in hand, to be meant only to prevent evasions by indirection on the part of commercial users, as in the liquor laws. Thus, a merchant who maintains a lunch-room for customers, although he makes no direct charge for what is furnished them, might be said to come under the statute. But we find nothing in the statute which indicates an intention to make it apply to purely public or to benevolent institutions of any kind.

The evident assumption of the statute is that the patrons of the establishments it covers have a choice whether they

will come to them or not, and whether, if they come, they will use oleomargarine or not. To enable them to make this choice, they must be advised by a placard. Where, however, they have no choice, but, as inmates, must accept whatever the bounty of the maintainer of the institution provides, the statute does not apply.

II.

The purely Federal character of this institution is distinctly recognized by the Supreme Court of Ohio, in *Driggs* v. *State*, 52 O. S. 53:

"The independent management of the National Home at Dayton through agents of the United States . . . the fact that all the inmates are made subject to the rules and articles of war the same as if they were in the army," etc.

Assuming, however, for present purposes, that the terms of the statute would otherwise apply, it must be presumed that it was not the intention of the Legislature of Ohio to attempt to interfere with the management by the Federal government of an institution founded and carried on by it as one of its direct agencies for the execution of its legitimate purposes. (See *Renner* v. *Bennett*, 21 Ohio St. 431.) If, however, such intention in fact existed, the attempt to carry it out must fail.

The question is not whether, in view of the cession by Ohio of full jurisdiction over the territory occupied by the Home, and the at least partial retrocession of jurisdiction by Congress, the State may arrest and prosecute persons generally who violate her laws thereon. We do not care now to consider the authority of Congress to divest the United States of full jurisdiction over territory once acquired for Federal pnrposes which have not been abandoned thereon, and shall assume that the State has now the rights which the

act of retrocession purported to restore. But this assumption leaves the real question undetermined.

If the State had no jurisdiction whatever over the territory, this case would never have arisen. Having general jurisdiction, so that it may punish individuals who therein break its laws, does not determine whether it has the right to punish a Federal officer for acts directly done in the discharge of his duty under the laws of Congress, because he has failed to comply with the law of the State which regulates like conduct by others.

The original grant of jurisdiction by the State reserved the right to execute civil or criminal process "on said lands and in the buildings which may be located thereon, in the same way and manner as if jurisdiction had not been ceded as aforesaid." (64 Ohio L. 149.) The act of retrocession provided "that nothing contained in this act shall be construed to impair the powers and rights heretofore conferred upon the board of managers, etc., in and over said territory." (16 Stats. 399.) We do not see, therefore, how the question of general territorial jurisdiction affects the case. It depends entirely on the nature of the act for which the petitioner was prosecuted, and the place where it was done is of no consequence save in so far as it tends to show the nature of the act.

If the petitioner had, in the Home, done something which was not connected with his official duty and violated the State law, it might be conceded without affecting the case that he could be prosecuted by the State. But it is admitted that the act he did was in the direct discharge of his duty. So we contend that no law of Ohio can regulate the official conduct of a Federal officer, and the courts of the State have no jurisdiction to punish him for an alleged violation of its laws by such an act. The State has police power, it is true, but not over Federal officers while engaged in the performance of their duties. It may regulate the storage of

gunpowder, but could it do so in a camp or station occupied by Federal troops, even in time of peace? It may require a state diploma for the practice of surgery, but could it punish an army surgeon for practicing among the soldiers without such diploma?

This principle is essential to the sovereignty of the Federal Government within the sphere assigned to it. No government can properly be called such which does not have and maintain at all times and in all ways the sole control of its officers while engaged in the performance of the duties intrusted to them.

This principle does not depend on the place where the officer performs his duty. Wherever he goes, in its discharge, is the United States of America. The Federal and State governments exist together, in and over the same territory. Each fills entirely with its sovereignty the limits of that territory, but each, within the sphere of governmental function intrusted to it, entirely excludes the other; otherwise there could be no *imperium in imperio.*

The principle appears to us to be not only carried by its mere statement, but also to be established by abundant authority.

We will not take time to mention the many cases in which it has been held that the states may not, without the consent of Congress, tax *quasi* private institutions chartered by the United States and adopted by it as instrumentalities of the Government, such as banks in *McCullough* v. *Maryland*, 4 Wheat. 361; *Osborne* v. *United States Bank*, 7 Wheat. 738; *Davis* v. *Elmira Savings Bank*, 161 U. S. 283; *McClellan* v. *Chipman*, 164 U. S. 357; or telegraph companies in *Leloup* v. *Port of Mobile*, 127 U. S. 641. In this class of cases, the agencies, not being purely governmental, are in some respects, in their private aspect, subject to state laws.

When, however, the officer or agency is strictly public—an arm or hand of the Federal government and nothing

else—there can be no qualification of the sovereignty behind him. The subject is fully discussed and this rule established in *In re Neagle*, 135 U. S. 1.

The principle has been enforced by Judge Shiras since this case was decided. (See *In re Waite*, 81 Fed. 359.) Judges Shiras and Taft, as the dates of their decisions show, reached the same conclusion independently.

The various authorities on the subject are cited in the two cases last above named, and in Judge Taft's opinion, and we deem it unnecessary to refer to them in detail.

We know of no case in which the Federal courts have permitted a Federal officer to be held and punished by a state court for an act alleged to be in violation of a state law but done in the discharge of his duty. In *In re Neagle*, the State was prosecuting a deputy marshal on a charge of murder. In *In re Waite*, the State was prosecuting a pension examiner for an alleged violation of a statute of Iowa for the punishment of threats. In *Tennessee* v. *Davis*, 100 U. S. 257, the State was prosecuting a deputy collector of internal revenue for murder. There was no doubt of the territorial jurisdiction of the State in any of these cases, but in each the right of the State to inquire into the conduct of the officer in the discharge of his duty was denied.

Counsel admit (Brief, p. 7) that the appropriation by Congress for the support of the Home is made on itemized statements required by law, which of course include oleomargarine. The fact that this item is not mentioned in the appropriation bill is immaterial. Even if Congress left the selection of rations entirely to the Board, or to the Governor, the case would be the same. The analogy of the interstate commerce cases applies. Congress has the sole right to regulate commerce. If it does not act at all, it means that commerce shall be free. (*Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196, 204.) It has the right to give directions to its officers. If it does not do so they are left to use their own dis-

cretion. Congress alone may prevent or punish an abuse of such discretion.

The propriety of the remedy by *habeas corpus* has not been questioned. If it should be, it is fully settled by the above cases. The right of a private citizen, who complains that he is being deprived of a Federal right by State prosecution, rests within the discretion of the court. *Cook* v. *Hart*, 146 U. S., pp. 194, 195; *Ex parte* Royall, 117 U. S. 251; *In re* Loney, 134 U. S. 377; *New York* v. *Eno*, 155 U. S. 96; *Whitten* v. *Tomlinson*, 160 U. S. 241. The court may leave the petitioner in such cases to his remedy by writ of error to the Supreme Court of the United States, after the final action of the state courts, or it may grant the writ at once. The circumstances which determine the exercise of the discretion are discussed in the above cases.

But when a Federal officer applies for the writ, and it appears that the prosecution against him is based solely on an act done in the discharge of his duty, it is always granted. *In re* Neagle, pp. 54, 58, 61, 71, 72, 73, 94; *Tennessee* v. *Davis*, 262.

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

JUDSON HARMON,

D. W. BOWMAN,

For Appellee.

CINCINNATI, *December* 28, 1898.

OHIO *v.* THOMAS.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 353. Argued and submitted January 10, 1899. — Decided February 27, 1899.

In making provision for feeding the inmates of the soldiers' home in Ohio, in accordance with the legislation of Congress in that respect, and under the direction of the board of managers, the governor of the house is engaged in the internal administration of a Federal institution, and the state legislature has no constitutional power to interfere with the management which is provided for it by Congress, nor with the provisions made by Congress for furnishing food to the inmates, nor does the police power of the State enable it to prohibit or regulate the furnishing of any

article of food approved by the officers of the home, by the board of managers and by Congress.

Federal officers who are discharging their duties in a State, and who are engaged in superintending the internal government and management of a Federal institution, under the lawful direction of its board of managers and with the approval of Congress, are not subject to the jurisdiction of the State in regard to those very matters of administration which are thus approved by Federal authority.

This is one of the cases in which it is proper to issue a writ of *habeas corpus* from the Federal court under the rule as stated in *Ex parte Royall*, 117 U. S. 241, instead of awaiting the slow process of a writ of error from this court to the highest court of the State where the decision could be had.

In this case complaint was made by affidavit by the dairy commissioner of Ohio against the appellee, alleging that on March 2, 1897, he violated the act of the legislature of the State of Ohio, passed in 1895, (92 Ohio State Laws, 23,) in relation to the use of oleomargarine. Appellee was arrested and brought before a justice of the peace, and declined to plead to the charge on the ground that the act complained of in the affidavit of the complainant was performed by him as governor of the soldiers' home, located in the county of Montgomery in the State of Ohio, and what he did was done by the authority of the board of managers of the home. He therefore moved to dismiss the complaint for want of jurisdiction in the magistrate. This motion was denied. He then consented to be tried without a jury upon the following agreed statement of facts:

"1. That on the 2d day of March, 1897, Joseph E. Blackburn was and now is the food and dairy commissioner of the State of Ohio.

"2. That on the 2d day of March, 1897, J. B. Thomas was and now is the duly chosen and acting governor of the Central Branch of the National Home for Disabled Volunteer Soldiers, located in the county of Montgomery, State of Ohio, and as said governor was in charge of the eating house at the said Central Branch of the National Home for Disabled Volunteer Soldiers.

"3. Said eating house is used by said J. B. Thomas for serving and furnishing to the inmates of said Central Branch of the National Home for Disabled Volunteer Soldiers their daily

food or rations, and is the only place so provided at said National Home, and is known as the mess room of the said Central Branch of the National Home for Disabled Volunteer Soldiers, situate on the grounds purchased, held and used by the United States therefor, and the acts complained of herein consisted in causing oleomargarine to be served and furnished, on the 2d day of March, 1897, as food and as part of the rations furnished to the inmates thereof, under appropriations made by the Congress of the United States for the support of said inmates; and that no placard in size not less than 10 x 14 inches, having printed thereon in black letters not less in size than 1½ inches square, the words 'oleomargarine sold and used here,' was displayed in said eating house.

"4. The affidavit in the cause is made in conformity with an act of the general assembly of the State of Ohio, (Ohio Laws, vol. 92, p. 23,) passed in 1895, and entitled 'An act to amend section 3 of an act entitled "An act to prevent fraud and deception in the manufacture and sale of oleomargarine and promote public health in the State of Ohio,"' passed May 16, 1894."

Section 3 of the act, as so amended, reads as follows:

"SEC. 3. Every proprietor, keeper, manager or person in charge of any hotel, boat, railroad car, boarding house, restaurant, eating house, lunch counter or lunch room, who therein sells, uses, serves, furnishes or disposes of or uses in cooking, any oleomargarine, shall display and keep a white placard in a conspicuous place, where the same may be easily seen and read, in the dining room, eating house, restaurant, lunch room or place where such substance is furnished, served, sold or disposed of, which placard shall be in size not less than ten by fourteen inches, upon which shall be printed in black letters, not less in size than one and a half inches square, the words 'oleomargarine sold and used here,' and said card shall not contain any other words than the ones above described; and such proprietor, keeper, manager or person in charge shall not sell, serve or dispose of such substance as or for butter when butter is asked for or purported to be furnished or served."

In addition to the above statement, reference was made to

the following acts of Congress, providing for the creation and government of the National Homes for Disabled Volunteer Soldiers, viz.: act of March 3, 1865, c. 91, 13 Stat. 509; act of March 21, 1866, c. 21, 14 Stat. 10; act of March 3, 1875, c. 129, 18 Stat. 343, 359. By the last cited statute, on page 359, it is made the duty of the managers of the home, on or before the first day of August in each year, "to furnish to the Secretary of War estimates, in detail, for the support of said home for the fiscal year commencing on the first day of July thereafter; and the Secretary of War shall annually include such estimates in his estimates for his Department. And no moneys shall, after the first day of April, 1875, be drawn from the Treasury for the use of said home, except in pursuance of quarterly estimates, and upon quarterly requisitions by the managers thereof upon the Secretary of War, based upon such quarterly estimates, for the support of said home, for not more than three months next succeeding such requisition. . . . And the managers of said home shall, at the commencement of each quarter of the year, render the Secretary of War an account of all their receipts and expenditures for the quarter immediately preceding, with vouchers for such expenditures; and all such accounts and vouchers shall be authenticated by the officers of said home thereunto duly appointed by said managers, and audited and allowed as required by law for the general appropriations and expenditures of the War Department."

By the act approved August 4, 1886, c. 902, 24 Stat. 222, 251, it was also provided that "hereafter the estimates for the support of the Home for Disabled Volunteer Soldiers shall be submitted by items." Also by the act approved October 2, 1888, c. 1069, 25 Stat. 505, 543, it was "*Provided further*, That it shall be the duty of the managers of said home, on or before the first day of October, in each year, to furnish to the Secretary of War estimates, in detail, for the support of said home for the fiscal year commencing on the first day of July thereafter, and the Secretary of War shall annually include such estimates in his estimates for his department." Also by the act approved June 11, 1896, c. 420, 29

Stat. 413, 445, an appropriation was made for the support of the home at Dayton, Ohio, and for "the cost of all articles purchased for the regular ration, their freight, preparation and serving."

The material portions of the acts of March 3, 1865, and March 21, 1866, have been enacted in the Revised Statutes of the United States, being sections 4825 to 4837, both inclusive.

On the third of April, 1867, the legislature of the State of Ohio passed an act ceding jurisdiction to the United States over the lands and their appurtenances within the State of Ohio which might be acquired by donation or purchase by the managers of the National Asylum for Disabled Volunteer Soldiers within the State of Ohio, for the uses and purposes of the asylum.

By the act, approved January 21, 1871, c. 25, 16 Stat. 399, Congress ceded back to the State of Ohio jurisdiction over the place named, and relinquished such jurisdiction on the part of the United States, and the act contained the following: "And the United States shall claim or exercise no jurisdiction over said place after the passage of this act: *Provided*, That nothing contained in this act shall be construed to impair the powers and rights heretofore conferred upon the board of managers of the National Asylum for Disabled Volunteer Soldiers, incorporated under said act, in and over said territory."

Upon these facts the appellee was convicted by the magistrate before whom he was tried, and was sentenced to pay a fine of $50, and to be imprisoned until such fine was paid. He refused to pay the fine, and applied to the Circuit Court of the United States for the Southern District of Ohio, Western Division, for a writ of *habeas corpus*, on the ground that the state tribunal before which he was tried had no jurisdiction to try him. The writ was granted and the constable made return thereto, setting up that he held appellee under the mittimus from the justice of the peace before whom he was tried. Upon the hearing the court made an order discharging appellee. 58 U. S. App. 431. The State appealed from that order to the Circuit Court of Appeals for the Sixth

Circuit, where it was affirmed, (87 Fed. Rep. 453,) and the State then appealed to this court.

Mr. Charles H. Bosler and *Mr. Otto J. Renner*, for plaintiff in error, submitted on their brief.

Mr. Judson Harmon for defendant in error. *Mr. D. W. Bowman* was on his brief.

Mr. Justice Peckham, after stating the facts, delivered the opinion of the court.

The act of the legislature of the State of Ohio, passed May 16, 1868, ceding jurisdiction to the United States, if it had remained in force, would have prevented the state officials from taking jurisdiction in this case. Congress, however, by the act of January 21, 1871, ceded back and relinquished the jurisdiction that had been granted, and provided that it would claim or exercise no jurisdiction thereafter, except as therein mentioned.

If we assume, what the state court decided, that the provisions of the state statute relating to the sale of oleomargarine were intended to apply to and cover the soldiers' home, the question then arises whether the State had the power to legislate so as to control the governor of the home, acting under the direction of the board of managers and by the authority of Congress, in regard to the internal administration of the affairs of the home and in respect to the conditions upon which an article of food might be provided by the governor under such directions and authority.

The home is a Federal creation, and is under the direct and sole jurisdiction of Congress. The board of managers have certain powers granted them, Rev. Stat. § 4825, and among other things to make by-laws, rules and regulations not inconsistent with law for carrying on the business and government of the home.

The persons entitled to the benefits of the home are "officers and soldiers who served in the late war for the suppression of the rebellion," and also other soldiers and sailors. The inmates

are subject to the rules and articles of war, the same as if they were in the army. Rev. Stat. §§ 4832, 4835.

Under the statutes above cited, in which it is provided that the board of managers shall furnish to the Secretary of War, in each year, estimates, in detail, for the support of the home for the succeeding fiscal year, it would naturally be the duty of the governor of each home, in order to enable the board of managers to perform their own duty, to report to the board the same kind of detailed estimates that the board is by law directed to report to the Secretary of War, and which are to be included by the Secretary in the estimates for his department. At all events, the duty is laid upon the board of managers, by the very terms of the statute, to make these estimates in detail. It is admitted in the record that the oleomargarine complained about herein was served and furnished by the appellee as food and as part of the rations furnished the inmates under the appropriations made by Congress for the support of such inmates.

From these facts the inference is plain that oleomargarine had been included in the detailed estimates for rations to be furnished the inmates, and that the appropriation for rations included oleomargarine as part thereof. Otherwise we should have to infer a dereliction of duty on the part of the board of managers in not making out estimates in detail, and we would adopt an inference contrary to the admission, which states that the oleomargarine was furnished as food under an appropriation of Congress. The appropriation does not precede the detailed estimates, but is made subsequently and is presumably enacted with reference thereto. Congress has therefore in effect provided oleomargarine as part of the rations for the inmates of the home. It is given them in the mess room of the institution and under the rules and regulations for feeding them there. In making provision for so feeding the inmates, the governor, under the direction of the board of managers and with the assent and approval of Congress, is engaged in the internal administration of a Federal institution, and we think a state legislature has no constitutional power to interfere with such management as is provided by Congress.

Whatever jurisdiction the State may have over the place or ground where the institution is located, it can have none to interfere with the provision made by Congress for furnishing food to the inmates of the home, nor has it power to prohibit or regulate the furnishing of any article of food which is approved by the officers of the home, by the board of managers and by Congress. Under such circumstances the police power of the State has no application.

We mean by this statement to say that Federal officers who are discharging their duties in a State and who are engaged as this appellee was engaged in superintending the internal government and management of a Federal institution, under the lawful direction of its board of managers and with the approval of Congress, are not subject to the jurisdiction of the State in regard to those very matters of administration which are thus approved by Federal authority.

In asserting that this officer under such circumstances is exempt from the state law, the United States are not thereby claiming jurisdiction over this particular piece of land, in opposition to the language of the act of Congress ceding back the jurisdiction the United States received from the State. The government is but claiming that its own officers, when discharging duties under Federal authority pursuant to and by virtue of valid Federal laws, are not subject to arrest or other liability under the laws of the State in which their duties are performed.

The claim is made that neither the board of managers nor the governor of the home can through their officers or by himself violate the statute law of a State having jurisdiction, when the acts constituting the infringement are not necessary for the government and management of the home for the purpose for which it was incorporated, or authorized by any act of the United States.

This claim might be conceded and still the conviction of the appellee would be invalid, because we find in this record the authority of the United States for the act of the governor. The statutes above referred to, when taken in connection with the admitted facts, show an appropriation by Congress for the

purchase of oleomargarine as part of the regular rations of the inmates of the home. The act of the governor in serving it was authorized by Congress and it was therefore legal, any act of the State to the contrary notwithstanding.

Under the facts herein the state court had no jurisdiction to try the appellee for the offence charged in the written complaint made to the magistrate. See authorities cited in *In re Waite*, 81 Fed. Rep. 359.

Assuming, in accordance with the decision of the state court, that the act of the Ohio legislature applies in terms to the soldiers' home at Dayton, in that State, we are of opinion that the governor was not subject to that law and the court had no jurisdiction to hear or determine the criminal prosecution in question, because the act complained of was performed as part of the duty of the governor as a Federal officer in and by virtue of valid Federal authority, and in the performance of that duty he was not subject to the direction or control of the legislature of Ohio.

The authorities cited in the case of *In re Waite*, *supra*, and those cited by the learned circuit judge in this case fully support the view we have taken herein. The cases of *Tennessee* v. *Davis*, 100 U. S. 257; *Ex parte Siebold*, 100 U. S. 371, 394, 395; *In re Loney*, 134 U. S. 372; *In re Neagle*, 135 U. S. 1, all concur in upholding the paramount authority of the Federal government under circumstances similar, in effect, to those set forth in this record.

Some of the same authorities also show that this is one of the cases where it is proper to issue a writ of *habeas corpus* from the Federal court instead of awaiting the slow process of a writ of error from this court to the highest court of the State where a decision could be had. One of the grounds for making such a case as this an exception to the general rule laid down in *Ex parte Royall*, 117 U. S. 241; *Whitten* v. *Tomlinson*, 160 U. S. 231, and *Baker* v. *Grice*, 169 U. S. 284, consists in the fact that the Federal officer proceeded against in the courts of the State may, upon conviction, be imprisoned as a means of enforcing the sentence of a fine, and thus the operations of the Federal government might in the meantime be

obstructed. This is such a case. In *Ex parte Royall*, it was stated by Mr. Justice Harlan, in naming some of the exceptions to the general rule there laid down, that "When the petitioner is in custody by state authority for an act done or omitted to be done in pursuance of a law of the United States or of an order, process or decree of a court or judge thereof; or where, being a subject or citizen of a foreign State, and domiciled therein, he is in custody, under like authority, for an act done or omitted under any alleged right, title, authority, privilege, protection or exemption claimed under the commission or order or sanction of any foreign State or under color thereof, the validity and effect whereof depend upon the law of nations; in such and like cases of urgency, involving the authority and operations of the General Government or the obligations of this country to or its relations with foreign nations, the courts of the United States have frequently interposed by writs of *habeas corpus* and discharged prisoners who were held in custody under state authority."

For the reasons herein given we think the order of the Circuit Court of Appeals, affirming the Circuit Court, was right, and it must be

Affirmed.

MR. JUSTICE HARLAN concurred in the judgment, but not in all the reasoning of the opinion.

The CHIEF JUSTICE took no part in the consideration or decision of this case.